No. 18-281

In the
Supreme Court of the United States

VIRGINIA HOUSE OF DELEGATES, M. KIRKLAND COX,
Appellants,

v.

GOLDEN BETHUNE-HILL, et al.,
Appellees.

On Appeal from the United States District Court for the Eastern District of Virginia

JOINT APPENDIX
Volume VIII of IX

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Defendants' Statement of Position (ECF 147)

Defendants, the Virginia State Board of Elections *et al.*, state the following in response to the Court's order of April 6, 2017 (ECF No. 136).

1. As this Court has noted, "Defendants are 'administrative agencies that implement elections' but '[did] not draw the districts'" whose constitutionality is at issue in this case. (ECF No. 108 at 6 (quoting Trial Tr. 12:14-25).)

2. Throughout this case Intervenor-Defendants have asserted, and they continue to assert, the constitutionality of the challenged districts. Both in this court and the Supreme Court, they have "carr[ied] the burden of litigation." *Id. See also Bethune-Hill v. Va. State Bd. of Elections*, No. 15-680, slip op. at 5 (U.S. Mar. 1, 2017).

3. In light of those respective roles, Defendants express no position on the specific issues raised in Paragraph 4 of the Court's April 6 order.

4. Defendants support a speedy resolution of the issues in this case, however, and will endeavor to answer the Court's questions about the effect that a particular ruling may have on their operations or on the administration of elections.

Respectfully submitted,
s/Stuart A. Raphael
Stuart A. Raphael
Solicitor General of Virginia

***

Exhibit A to Statement From Governor (ECF 275-1)

GOVERNOR NORTHAM ISSUES STATEMENT ON PARTISAN REDISTRICTING PROCESS AND PLANNED VETO OF HOUSE BILL 7003

RICHMOND—Governor Northam today issued the following statement on the General Assembly's progress to produce a constitutional remedy pursuant to the Court's approaching October 30 deadline.

> "Since the federal court's June 26th finding that 11 Virginia House of Delegates districts were unconstitutional, I have closely monitored the legislature's progress to produce a remedy. I understand and appreciate the effort devoted to the maps drafted in House Bills 7001, 7002, and 7003; however, the nature of the August 30th and September 27th proceedings in the House Privileges and Elections Committee reinforced my belief that this partisan process should not continue and that the federal court is best positioned to construct a remedial districting plan.
>
> Given this conviction, I must unequivocally state that I will veto House Bill 7003 should it reach my desk.
>
> The federal court has contemplated a process by which it, through a nonpartisan special master, will construct a remedial districting plan should legislative efforts fail, and I believe that is the best course of action before us. Virginians deserve fair and constitutional lines in place in time for June 2019 primaries, without further delay.

I have championed nonpartisan redistricting from my first campaign for public office in 2007 and I continue to believe that is the true solution on this incredibly important issue. In the 2018 General Assembly session I offered amendments to House Bill 1598 and Senate Bill 106 that would have created a fairer redistricting process, particularly with respect to the protection of racial minorities, but those were defeated on a party-line vote. I hope legislators from both parties and in both chambers will come to the table in the 2019 session to propose and adopt an amendment to enshrine nonpartisan redistricting in the Virginia Constitution. I will support this effort and engage when appropriate to reinforce the fundamentals of fairness, which are lacking in the current process. Furthermore, I will continue to advocate for the protection of minority representation in the General Assembly."

Transcript of Bench Trial, *Bethune-Hill v. Va. House of Delegates* (Oct. 10, 2017)

[3] THE CLERK: Case No. 314-cv-852. *Golden Bethune-Hill, et al. v. The Virginia State Board of Elections, et al. and the Virginia House of Delegates, et al.*

The defendants are -- the plaintiffs are represented by Kevin Hamilton, Abha Khanna and Aria Branch.

The Virginia State Board of Elections is represented by Matthew McGuire.

The Virginia House of Delegates is represented by Amy Tolbert, Mark Braden, Katherine McKnight and Richard Riley. Are counsel ready to proceed?

MR. HAMILTON: We are, Your Honor.

MR. BRADEN: Yes, Your Honor.

MR. MCGUIRE: Yes, Your Honor.

JUDGE PAYNE: Good morning. We are ready in the Bethune-Hill case. And I believe you got the directive that we'd like to hear about 15 minutes. Is the defendant going to make any argument?

MR. MCGUIRE: No, Your Honor. We have a brief opening statement, but otherwise we're going to join with the Defendant-Intervenors.

JUDGE PAYNE: All right.

All right. For the plaintiff.

MR. HAMILTON: Good morning, Your Honors. It's a pleasure to be here. My name is Kevin Hamilton, and I [4] appear today on behalf of the plaintiffs. Thank you for the opportunity to appear with you today. During my opening remarks, there's going to be

a few illustrative exhibits displayed on the screens. They have been shared with opposing counsel, and there's paper copies before you.

The equal protection clause of the 14th Amendment forbids race-based redistricting absent a compelling state interest and even then, only when narrowly tailored to meet that state interest. The evidence will show that in 2011, the Virginia State General Assembly used race as a prominent factor in the drawing of these 11 House of Delegates districts at issue in this case, had no compelling state interest for doing so, and even if it did have a compelling state interest, failed to narrowly tailor the districts to those -- to that state interest.

The Court, of course, has already held a trial in this matter in 2015 and has had the opportunity to review the parties' trial briefs as well as the expert reports admitted on both sides. And, of course, the Court has had additional guidance from the Supreme Court which emphasized the importance of examining predominance district wide because focusing on particular portions in isolation may obscure the significance of relevant district-wide evidence such as stark splits in the racial [5] composition of populations moved into and out of disparate parts of the district or the use of an expressed racial target, closed quote. So in my limited time this morning, I wanted to emphasize just a few key facts that we believe will be established beyond reasonable dispute during the course of this trial and highlight some of the additional evidence that we will present to the Court.

Let me start with racial predominance. The Supreme Court called on this Court to do a holistic

analysis to determine whether race predominated in the challenged districts. A holistic evaluation of evidence, including both direct and circumstantial evidence, shows that race drove this redistricting process from start to finish. Indeed, stark splits in the racial composition of populations moved in and out of the disparate parts of the district, and widespread and now admitted use of an expressed racial target can hardly be disputed at this point.

First, despite the all-consuming battles in the first trial, there is now no dispute that Delegate Jones, the principal architect of the challenged district, used a 55 percent black voting age population figure as an expressed racial target in structuring the districts. As the interveners admitted at the pretrial conference just last week, they no longer dispute this central fact, and, [6] of course, they can't, really, because the evidence is just overwhelming.

JUDGE PAYNE: Both the Supreme Court and this court have held that it's the law of the case, and we don't need to proceed with it or actually hear any evidence about it, do we?

MR. HAMILTON: Thank you, Your Honor. The evidence will show that a 55 percent expressed racial target had a direct and significant impact on the district lines. Black voters were strategically sorted into and out of the challenged districts to make sure each district reached that expressed racial target. White voters were carefully shuffled around to ensure that they dilute the black voting age population of any challenged district. The evidence will show careful separation of white areas from black areas, splitting cities like Hopewell, neighborhoods like The Fan

district in Richmond, counties like Chesterfield and even specific VTDs throughout the state. The racial sorting that occurred in the challenged districts was calculated, mechanical and extreme and it was successful. In the end, every challenged district reached at least 55 percent BVAP.

Delegate Jones had to stray far from traditional redistricting principles to ensure that all 12 very different districts complied with this racial target, and [7] indeed, as we will show, Delegate Jones sacrificed virtually every traditional redistricting principle when drawing the challenged districts. And he did so far more often in the challenged districts than he did in the nonchallenged districts. Only one rule was never broken, and that was the 55 percent expressed racial target.

To help the Court understand how race drove the redistricting process, the plaintiffs will present the testimony of two additional expert witnesses. First, Dr. Rodden from Stanford University will walk the Court through density maps to show precisely how the district lines were drawn to capture black populations and exclude white populations. Dr. Maxwell Palmer from Boston University will further demonstrate the stark racial differences between the populations moved in and moved out of the challenged districts and will establish that partisan politics simply can't explain these district lines, as well as race.

Plaintiffs will also present testimony from delegates and former delegates, some of whom were intimately involved in the redistricting process. With that evidence, this court will be able to understand how race drove the redistricting process both at the

macro level and at the micro level. The macro level, Delegate Jones carefully sorted voters among the challenged districts by [8] race. Some districts needed additional black population to achieve 55 percent black voting age, and therefore, Jones, Delegate Jones, carefully moved black voters from other districts into these recipient districts.

In other cases, the districts had too many black voters and they had voters to spare, and those served as donor districts to the neighboring districts. And so Jones took black voters out of these and shuffled them into neighboring districts in order to ensure that all the districts reached 55 percent. All of the districts were governed by this nonnegotiable racial rule. All of them saw populations moved in and out in service of that rule. That is precisely the sort of racial sorting that the Supreme Court has relied on to find that race has predominated.

And it's clear at the micro level, too, in the illustrative display you can see that the voting tabulation districts themselves were split along racial lines. The map splits populations in 32 VTDs between challenges and nonchallenged districts. In every one you can see careful attention to race as the line curves and snakes to separate black population from white population. All of the splits are such that the higher black voting age population is assigned to a challenged district and the lower BVAP portion is assigned to a nonchallenged [9] district. This isn't an accident. No traditional redistricting principle can explain these race-based splits.

The Court will hear from interveners a variety of other factors that supposedly played some role in the

redistricting process. As an initial matter, these post hoc explanations cannot be taken at face value. For example, Delegate Jones previously testified that many of his decisions were driven by requests from other delegates, but testimony from many of those delegates that we'll hear this morning will directly undercut that testimony. Moreover, even if factors other than race played some role, it's irrelevant as a matter of law. Race can predominate even if the legislature pursues other nonracial goals in addition to its racial goals, and that is exactly what happened here. Every rule, principle or criterion was compromised at some point with the sole exception of the 55 percent black voting age population.

Let me turn to narrow tailoring and just make a couple of points. Intervenors will argue that their race-based approach was narrowly tailored to serve a compelling government interest; namely, compliance with the Voting Rights Act, but the evidence will not support that argument. First, Delegate Jones did not tailor his use of race to a compelling government interest. It's no [10] longer disputed, as Your Honor just pointed out, that the 55 percent racial target was created primarily to address District 75. And then in the words of both this Court and the Supreme Court, quote, applied across the board to all 12, closed quote, challenged districts. That means the 55 percent rule served no government interest in the remaining 11 districts.

The Court's prior opinion set out all the factors that gave rise to the 55 percent rule: Conversations between Delegate Jones and Delegate Tyler, who represents District 75, Delegate Jones' understanding

of District 75's election results, the prison population in that district and so on. But when Delegate Jones turned to the other districts, he didn't do anything remotely close to the same analysis, which he will admit, he didn't look at voter turnout. He didn't look at racial voting patterns. He didn't look at registration rates. And with only a handful of very limited and dated exceptions, he didn't look at election results. He didn't put any of the districts on the table and compare them to District 75 and ask do they need 55 percent black voting age population to ensure that the minority population could elect a candidate of their choice in that district.

Simply put, Delegate Jones didn't conduct any meaningful analysis of the other 11 challenged districts, [11] choosing instead to sort voters by race in a one-size-fits-all approach. This is, in fact, far more suspicious than the numerical target in Alabama, which was at least tailored to individual districts. This ignored the differences between districts.

Second, the evidence will show that Delegate Jones, if he had undertaken a functional analysis in the 11 remaining challenged districts, he would have found no reason to believe that the other 11 challenged districts needed 55 percent black voting age population to ensure black voters had an opportunity to elect candidates of their choice. Dr. Palmer's analysis will demonstrate that there was just one exception, District 75. None of the intervenors' experts will demonstrate otherwise. Remarkably, in fact, despite the fact that it's intervenors' burden to show narrow tailoring, their experts have provided nothing but incomplete and inconclusive analyses that do

nothing to establish the necessity of the 55 percent BVAP rule.

Now, in its order late last week, the Court asked the parties to summarize, quote, new evidence addressing factors other than race that were submitted in the formation of the district. Candidly, that won't take 15 minutes. That won't take 15 seconds.

JUDGE PAYNE: Fifteen minutes was the whole [12] opening statement.

MR. HAMILTON: I understand, Your Honor. There is no such evidence. Remember, intervenors demanded a whole new round of discovery and a full-blown evidentiary trial, but they stand before the Court bereft of the very evidence the Court asked for. In fact, plaintiff is unaware of a single document produced in this latest round of discovery that provides new evidence to support intervenors' position.

Now, it's possible that intervenors may try to offer new evidence at trial. For example, intervenors have offered exhibits that were never produced in discovery; maps, for example, that were never contemplated or prepared by the legislature, never produced in discovery, never testified by an expert, apparently not even prepared until the last -- to the very eve of trial. One can only presume that these maps were prepared by an expert outside the scope of expert discovery and in violation of Rule 26. We objected. At an appropriate time when the maps are offered, we will object to those, and the Court should exclude them.

And the intervenors may try and elicit testimony from Delegate Jones that was not offered at the first

trial, including testimony about additional nonracial factors that played a role in its decision. These are, of course, [13] the very post hoc justifications that the Supreme Court cautioned again after reviewing intervenors' evidence on appeal. Justifications that the legislature, in theory, could have used, but in reality did not. And the notion that Delegate Jones would remember more clearly today in 2017 what he did not in 2015 is simply not plausible. At the very least, the Court should treat that testimony with a healthy dose of skepticism.

At the end of the day, Your Honor, this case -- Honors, this case is a simple case with an overly complicated record. Delegate Jones applied a one-size-fits-all expressed racial target to very different districts scattered across the Commonwealth. While every other criterion was compromised along the way, the racial target was not. Extreme racial sorting was required to comply with the rule, which is illuminated by stark splits in the racial composition of the populations moved in and out of disparate parts of the district. Exactly what the Supreme Court calls for. But Delegate Jones had no reason to believe that that racial sorting was required to avoid retrogression, let alone a strong basis in evidence. In fact, Delegate Jones admits he didn't even try and assess the necessary level of black voting age population in any district except District 75. That mechanical and unjustified use of race offends the [14] 14th Amendment. The evidence, both old and new, will compel a decision for the plaintiffs. And at the conclusion of the trial, plaintiffs will ask this Court to invalidate these 11 districts and implement appropriate, immediate and effective remedies for this

General Assembly's constitutional violations. Thank you, Your Honor.

JUDGE PAYNE: Thank you.

Mr. Braden.

MR. BRADEN: Good morning, Your Honors. There are two questions before this Court. Was race a predominate factor in drawing the 11 challenged districts? If the answer to that is yes, which I don't believe it is, but if the Court determines the answer to any of the districts is yes, then you get to the second question. Was that district narrowly tailored to support a compelling state interest? And the compelling state interest recognized by the Supreme Court is preclearance under Section 5 of the Voting Rights Act.

First, let me acknowledge that we were wrong. "We" being plaintiffs and defendants. Plaintiffs were wrong in this case initially because they took the position that the 55 percent target goal, whatever we want to describe it, was enough to prove racial predominance. That's the position of Justice Thomas and Justice Alito. That's not [15] the position of the Supreme Court. They rejected that as the basis alone to prove predominance. We thought that if a district wasn't gerrymandered in sort of the textbook traditional notion of gerrymandering, that that was enough to prove compliance, and the Supreme Court has told us we were wrong, too. That's not enough. It's strong evidence and they have never invalidated a plan that did comply with traditional redistricting criteria, but they said that's not enough. The Court directs this Court to do a holistic analysis, not just to look where the lines look strange, but to look at the

whole districts and to see whether or not it might be possible for there to be predominance when there's not conflict. And the Court expressed significant concern over the notion of post hoc justifications. Justifications that were just theoretical justifications instead of reality. And if you look at Alabama and North Carolina, racial gerrymandering cases, the Court is also talking about notion of significant numbers of people being transferred back and forth. So let me set forth to the Court what evidence we believe is going to be presented.

First of all, it's important to remember where the burden lies, and the burden lies with the plaintiffs. It's the plaintiffs' obligation to prove to this Court that race was predominant. So it appears that the [16] plaintiffs, from their briefs and the reports of their experts, are going to revisit the traditional redistricting criteria. We believe the Court has already made a decision on those 11 districts, that those 11 districts did, in fact, comply with traditional redistricting criteria. But we're anxious to revisit that issue, too, if the Court desires. It seems that most of their support for the notion --

JUDGE PAYNE: Are you saying -- if the Court desires, it's my understanding that both of you decided to put that in, the plaintiffs fundamentally having recognized that the rule they argued, which was 55 percent is enough, doesn't work and they would fail on that record. If they -- if we were to judge this case only on the record that existed, you said that you -- in your opening salvo when we were deciding how to proceed, you said that they lose and you win as a matter of summary judgment. You said you wanted to go ahead

and augment the case you had already put on about that. As I understand it, you wanted to invest those issues as did they. Is that incorrect or --

MR. BRADEN: That's correct. We're firm believers in belts and suspenders.

JUDGE PAYNE: All right. Sorry. Excuse me.

MR. BRADEN: No problem, Your Honor. The [17] defendants' case is going to be everything you ever wanted to know about Virginia redistricting and more. Let no detail of this process in your mind that's unanswered be unanswered. Who is coming? Our two fact -- our initial first two fact witnesses are going to be Delegate Jones, the sponsor, the drafter, I think the architect of the bill, the plan, and the consultant who worked with him, who you might -- if you think of Delegate Jones as the architect of the plan, then you should think of John Morgan, who's the consultant, as sort of the carpenter, the craftsman, the person who worked with Jones at his direction to draft the plan.

We're going to have three expert witnesses who are going to -- the same three expert witnesses we had before to address the technical aspects of racial black voting analysis, and some of the significant statistical problems this Court recognized before in the analysis of the plaintiffs' expert, which are repeated here.

And we're going to have four delegates come with a narrower perspective, but their perspective on the process. Be clear, though. There is available to this Court, with the limitations of their memory, the individuals who know every detail about every line who aren't looking back at drawing the lines. They're looking at what they did at the time they were

drawing the lines. [18] There's no post hoc justifications here.

So let me discuss what the testimony is going to be, but first, I think it's important for this Court to frame all the testimony you hear in one of the clichés familiar to people involved in the redistricting process. And it's to remember that drawing a single House district or drawing a single representative district is remarkably easy. You wouldn't even need a computer to do that. We could go back to the old days of magic markers and maps and you'd have no problem drawing a district, a single House district and making the population work and following traditional redistricting criteria. And, in fact, you could go to the legislature, when they are in session, and find every member there prepared to tell you what their district should look like. That's an easy process.

What's not an easy process, what is a hard process, a very difficult process, normally described as the most contentious difficult process in the legislative chamber, is drawing a hundred district plan. So everyone who criticizes an individual district, who tells you what's wrong with that district, you have to put it in the context of that's that district, that's one little keyhole look at it. Jones will provide to this Court, in any level of detail that this Court desires, an outline of the [19] process. The process in Virginia was the perfect process in the sense of organizationally. Much broader, more involved than any prior process, more hearings across the state, the adoption of criteria very similar to ones that were done ten years before with one important change to remember; the population deviations were reduced to 1 percent one

way or another, which is very important to remember because that will impact the number of VTDs split in the state significantly.

There's a drafting process. There's a significant negotiation process. Jones meets with 80 delegates, he estimates. A very involved process. You'll hear floor statements, not after-the-fact, looking-back statements, of the role of the different groups in the legislature in the line drawing process. This plan got 80 votes, the majority of the republicans -- no surprise, all the republicans -- a super majority of the democrats and all but one of the Black Caucus. You'll hear in detail the actual drafting, how plans are drafted. Jones and Morgan will talk about the process of using the computer software. We'll bring it up and show it to you, how the plan is done. It's done on a computer. It's done with Maptitude software. Into that software, census data. The census includes geography. There's an electronic map of the United States. Not much of a surprise anymore. I [20] have to admit, it was quite a shock to me 20 years ago when I saw the first one, but everybody now has one of these in their cars. But this is a detailed electronic map of the United States that consists of small building blocks, which are census tracks -- census blocks, which are then aggregated up into VTDs, vote tabulation districts, and those two things are the building blocks, how you actually create the plan. The data that's available is geographic data, population data, race data and political data. Political data, contrary to what you read, is available to the line drawer at the block level. The data has been aggregated out to the block level for Morgan's actual line drawing process, when he draws at the block level.

But let's understand the process. Jones is the architect of the plan. He draws the plan at the VTD level, precincts. You've got the data. You put it together, and you get the basics of a plan. That plan is done politically. It's finished. He's done the negotiations, you know, and all the difficulty of trying to herd cats in the legislature. The actual legislative process, a little bit messy, and you're going to hear the messy process, but that messy process of making people happy in getting the votes you need to pass. That's drawn.

[21] Then -- then John Morgan comes in and goes through that plan and makes sure it complies with the one person, one vote criteria adopted, which is 1 percent up and 1 percent down. What does he do? That's when the VTDs are split. VTDs, precincts, aren't any type of governmental subdivision. These are simply administrative convenience. And we draw plans at the VTD level because that's what we have census information on. But to get the population down to this population range, John Morgan had to go through the plan and split VTDs. Virtually -- not totally, but virtually, without exception, every split VTD is done to equalize population pursuant to the criteria. It shows an incredible, profound misunderstanding of the process for people to use that, then, as the basis to show predominance. That's just a total misunderstanding of the process. And that's not terribly surprising because look at the resumes of their experts. They have zero, zero experience drawing a plan for a legislative chamber. They have no plans that they have drafted that have been adopted by any legislature, much less any experience drawing a plan

in Virginia, much less any Virginia political experience.

This whole VDT analysis is silly. It's too few people to be the predominant part of it. These districts are and what's going on in this plan is very simple and [22] straightforward. It's a continuation of the prior plan. These 11 challenged districts are the same challenged districts the state of Virginia fundamentally had in 1991 and they are the same challenged districts in 2001.

Now, if the Court were to decide, I think wrongly, that any of these districts are predominately drawn on race, then we have the second question, narrowly tailored. I think it's very important to think, on the narrowly tailored question, what the obligation of the state was. Preclearance is a different process than sort of the traditional situation because the burden of proof has changed. The state has an affirmative duty to get its plan precleared under Section 5 of the Voting Rights Act. It has an affirmative duty to prove that the plan did not retrogress the ability of the minority community to elect its candidates of choice.

Now, how does DOJ make that determination? Well, they -- a variety of different ways. One of the principal ways, not surprisingly, is they go to the leaders of the black community and the members of the legislature and ask them whether the plan retrogresses. And what do the leaders of the legislature say? We need 55 percent of the majority black districts not to retrogress. That's what they say on the floor. This is not somebody dreaming it up now and bringing him here. This is what they said at [23] the floor during the debate. This is what they said to

Jones when he was drawing the plan. And we don't -- this is contemporaneous videotaped floor testimony of that. That's not a post hoc analysis.

As best I can tell, the plaintiffs are arguing some type of magic number analysis. The last time we tried this case, their position was that all these districts needed to be more than 50 percent. And now we're looking at this and they are objecting to using a goal of 55 percent. Is this really a constitutional claim between 50 and 55 percent? And how would we come up with that magic number for each district? And which expert would we believe? We've had a number of experts. Six, I guess, in the case now. If we brought six more in, we'd get a different number from each one as to what the magic number would be. There is no magic number. These statistical analyses are all, in the end, just estimates based upon questionable data. There needs to be a range. The Court told us that we shouldn't have a rule that ties the hands of the legislature. We should recognize this as principally a legislative function. Their argument is a straightjacket, a straightjacket under Virginia, a program where no legislature could get a plan passed and precleared. Thank you, Your Honor.

MR. MCGUIRE: Good morning, Your Honors. May it [24] please the Court. Matt McGuire from the Attorney General's Office. Very briefly, on behalf of the defendants, the members of the Virginia State of Elections, the Department of Elections and its commissioner, as this Court is aware, the defendants are administrative agencies and officials that implement elections but have no involvement in drawing the districts being challenged. Throughout

the case, the defendant-intervenors have carried the burden of litigation and they will continue to do so this week. Although defendants will not be presenting an independent substantive case or evidence in defense of the challenged districts, we join in the arguments of the defendant-intervenors.

In the event that the Court has questions about the effect that a particular ruling may have on the defendants' operations or on the administration of elections, the defendants will endeavor to provide the Court with that information. Thank you.

JUDGE PAYNE: Thank you very much. Mr. Hamilton, call your first witness.

MR. HAMILTON: Your Honor, as an initial matter, we'd like to offer all of the plaintiffs' exhibits that have not been previously admitted. That would be Exhibits 69 through 90. There are no objections, we understand, [25] from intervenors or defendants.

JUDGE PAYNE: Is that correct, no objection?

MS. MCKNIGHT: That's correct, Your Honor.

JUDGE PAYNE: Admit Exhibits -- Plaintiffs' Exhibits 69 through 90 are admitted without objection.

MR. HAMILTON: Your Honor, Exhibits 1 through 68 were all admitted during the 2015 trial of this matter. We understand they already comprise the record, are a part of the record before the Court, and so I wanted to just take a moment to explain the notebooks behind Your Honor that have been provided. Those all -- those include certain of the exhibits that were admitted in 2015, but not all of them. On the flash drives that were provided to each

chambers it includes a complete, comprehensive collection of all the exhibits offered by plaintiffs for the convenience of the Court.

Finally, we'd like to offer all of the deposition designation excerpts. Those were filed last night. They have been agreed by both parties. I believe all the objections have been resolved at this point.

JUDGE PAYNE: Do they have an exhibit number?

MR. HAMILTON: They do not. They were entered -- they were filed last night.

JUDGE PAYNE: What is the ECF number? Do you know?

[26] MR. HAMILTON: I don't know off the top of my head.

JUDGE PAYNE: We'll find that out.

MR. HAMILTON: Okay.

JUDGE PAYNE: And there's no objection to what was filed last night, assuming we find out what was filed last night, Ms. McKnight?

MS. MCKNIGHT: That's correct, Your Honors.

JUDGE PAYNE: All right.

MR. MCGUIRE: Your Honor, it was ECF220-1.

JUDGE PAYNE: 220-1? Thank you.

MR. HAMILTON: And then finally, for the convenience of the Court, there is a complete set of transcripts from the 2015 trial in the notebooks behind you for ease of reference during the presentation of evidence.

JUDGE PAYNE: All right. The first witness is who?

MR. HAMILTON: It's Jennifer McClellan. My colleague, Aria Branch, will be doing the examination.

JENNIFER MCCLELLAN,

called at the instance of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

[27] BY MS. BRANCH:

Q Good morning, Senator McClellan.

A Good morning.

Q Can you please state your name for the record?

A Jennifer McClellan.

Q And would you please spell your last name?

A M-C-C-L-E-L-L-A-N.

Q Thank you. What district did you represent at the time of the 2011 redistricting?

A The 71st House District.

Q And where is House District 71 located?

A It is predominately in the northeast quadrant of the City of Richmond, parts of The Fan through to east -- East End of Richmond, most of North Side, and one precinct in eastern Henrico.

Q And you testified in the last trial; is that correct?

A Yes.

Q Can you remind the Court of the role you played in the 2011 redistricting process?

A Yes. I coordinated requests to Delegate Jones for changes to the map in -- as introduced from the Richmond area democratic delegates. So on behalf of myself, Betsy Carr, who represented the 69th District, and Delores McQuinn, who represented the 70th District.

Q And did you directly communicate with Delegate Jones [28] as part of that process?

A Yes.

Q Did there come a time -- or when did you first approach Delegate Jones about the map?

A When the original House Bill 5001 was introduced and that map was made public, I looked at it and had some concerns about it and went to Delegate Jones to express my concerns.

Q And what were those concerns?

A There were two primary concerns. The two extreme ends of the district were The Fan neighborhood and the Churchill neighborhood, The Fan to the west and Churchill to the east. Prior to redistricting, the majority of and the core heart of The Fan neighborhood was in the 71st District. In the map, precinct 207, which made up the bulk of the western portion of The Fan, was completely out of the 71st District, and precinct 208, which is the precinct that I lived in, was split between the 71st and the 69th. And I --

JUDGE PAYNE: You're talking about in the benchmark plan, the previous plan?

THE WITNESS: Yes.

Q You're testifying about House Bill 5001 --

A Yes.

Q -- is that correct?

[29] A Yes.

JUDGE PAYNE: Well, that's what I'm asking her. I'm trying to understand. Are you talking about how it was before 501 was introduced or are you talking about what 501 was?

THE WITNESS: I'm explaining what 501 did to the 71st District and why I was concerned and went to Delegate Jones to express those concerns.

JUDGE PAYNE: When you were doing that, you used the phrase several times to indicate that something was existing before 501, or maybe I misunderstood you. So maybe you can sort that out. If you're going to talk about 501, say -- it's 5001.

THE WITNESS: Sorry. Yes.

JUDGE PAYNE: Say what 5001 did to the former district that you were concerned about so we can understand your concerns.

THE WITNESS: Okay.

JUDGE PAYNE: Because right now, the way it looks is that we're mixing what the benchmark plan was, that's the former plan, with what 5001 proposed, and I'd like to make sure we don't do that. Do you understand my problem?

THE WITNESS: I do, and I'll try to be more specific.

[30] JUDGE PAYNE: Thank you.

THE WITNESS: Thank you.

Q So, Senator McClellan, the changes that you were just discussing, the concerns that you expressed to Delegate Jones, were those concerns in the -- about the 5001 map?

A Yes. Yes. I --

JUDGE PAYNE: I'd rather you start again with them.

MS. BRANCH: Okay.

JUDGE PAYNE: Because asking the question that way conflates the two problems; that is, talking about the past plan that was in existence at the time plus 501 and it's hard to separate them. And your question just conflated them again. So start all over again, will you, about the concerns?

MS. BRANCH: Okay.

JUDGE PAYNE: Please.

Q When did you first approach Delegate Jones about the map?

A When I saw the map for House Bill 5001, when it was first introduced and made public.

Q And what were your concerns about that map?

A I was concerned that House Bill 5001 split The Fan neighborhood, which was the western most part of the 71st District prior to 5001, it split that neighborhood and put [31] the bulk of it in the 68th District. In doing so, it split a precinct, precinct 208. So that was my first concern.

On the eastern side of the district, prior to 5001 being introduced, precinct 707, which is the Churchill neighborhood, was all in the 71st District. Churchill was split -- prior to redistricting, a small portion of

northern Churchill was in the 70th District. But in House Bill 5001, that line went into 707 and split 707 and the Churchill neighborhood along Broad Street. My concern with that was Broad Street is the historic dividing line going back to the days of segregation between white Churchill, which was south of Broad Street, and black Churchill, which was north and still is north of Broad Street. And that, in particular, concerned me because to this day, there are still impacts in the community of that traditional boundary line, and to make the boundary between two House districts, that same line caused me a number of concerns.

Q Did you express those concerns to Delegate Jones?

A Yes.

Q And what was his reaction?

A He said he was not very familiar with the Richmond area and clearly not as familiar as those of us who represented it. If we came up with a better way to draw [32] the districts that met two criteria, first, the 1 percent population deviation, and the 55 percent black voting age population criteria, that he would be open to making changes that we suggested.

Q And subsequent to that, did you create any maps of your district?

A Yes.

Q And did the 55 percent black voting age target affect the way you drew maps?

A Yes.

Q Did you have an understanding as to whether maps containing majority black districts with black voting age populations below 55 percent would be acceptable?

A Based on what Delegate Jones told me, I believe they -- any district that fell below black voting age population of 55 percent would not be accepted.

Q And what was the black voting age population of your district prior to redistricting?

A Based on the 2010 census, it was around 46 percent.

Q Did you have an understanding as to whether maps that contained districts that split counties would be acceptable?

A I assumed they would be because House Bill 5001, in fact, split counties between districts.

Q And did the final map also split counties, House Bill [33] 5005?

A Yes.

Q How about districts that split predicts? Were they acceptable?

A I assumed they were because House Bill 5001, as introduced, contained split precincts.

Q How about districts that split communities of interest?

A Again, I assumed that would be acceptable because House Bill 5001, as introduced, did, in fact, split communities of interest.

Q Let's now discuss the specific changes that were made to your district. First, at a very general level, can

you briefly describe how your district changed after redistricting?

A Yes. It shifted east is sort of broadly what I would say. The western boundary shifted east to 2008. And I'm now talking about -- I'm sorry. I'm talking about House Bill 5005 as signed by the governor, what changes were made.

JUDGE PAYNE: Is that the question?

MS. BRANCH: Yes.

A So as signed by the governor, the bill shifted the western boundary of my district in The Fan to the boundary of precinct 208. In the east, I shifted and picked up [34] three or four precincts in the 7th council district of the City of Richmond and I picked up one precinct, Ratcliffe, in eastern Henrico. To the northwest, I lost three smaller precincts in Henrico County; Hilliard, Stratford Hall and -- right now I'm blanking on the name of the third one, and then I picked up a very small portion of The Fan, precinct 204 that was a piece of The Fan, Scott's Addition, and the rest was sort of industrial commercial area. And then in the north, I swapped precinct 301 for precinct 604.

Q And what effect did the shift east have on your district?

A It increased the black voting age population significantly.

Q Senator, let me direct your attention to Defendant-Intervenors' Exhibit 94. It's page 4 of that exhibit. You've seen this map before, right?

A Yes.

Q And do you know how to read this map?

A Yes.

Q And just so we're all on the same page, the white hatched areas of this map with no yellow coloring reflect the areas that were removed from your district in 2011. The bright yellow areas with no hatching reflect the areas that were added to your district, and the yellow hatched [35] areas reflect the areas that were in your district prior to redistricting and remained in your district after the process was complete.

A Okay.

Q You mentioned precinct 207. Where is that precinct located on the map?

A The southwest border in the white hashmark.

Q And can you describe the racial and political composition of precinct 207?

A Yes. That is --

JUDGE PAYNE: Point to 207 on the map and your little thing will come up indicting what you're talking about. Put a checkmark, a little, small checkmark. Do you see that?

THE WITNESS: Can you see that? I tried to do a check. I'm not sure.

JUDGE PAYNE: That little red mark. Is that it?

THE WITNESS: Yes.

JUDGE PAYNE: Okay.

A So that is a highly densely populated portion of The Fan that is almost exclusively -- I'd say probably 98 percent or so -- white and very democratic and was a high turnout precinct traditionally. It still is.

Q Prior to 2011, how long had that precinct been in the 71st House District?

[36] A At least 20 years.

Q And which district was it moved to?

A Sixty-eight.

Q And who represents District 68?

A Manoli Loupassi.

Q Is he a democrat?

A No.

Q Did you discuss the movement of 208 with Delegate Loupassi at any time?

A Yes.

Q Can you describe that conversation?

A Yes. I -- first, can I -- can I put that conversation in context first?

Q Sure.

A As I was using the map software to try to put 207 back in the 71st District, because my goal was to keep as much of The Fan together in the 71st as possible, no matter how I sliced that precinct, it pushed the BVAP below 55 percent if I also tried to keep Churchill united. And so I became resigned to the notion that I would have to give up part of The Fan.

So I went to Delegate Loupassi and said, You have to pick up part of The Fan. Do you have a preference as to what you pick up? His response was --

MS. MCKNIGHT: Objection, Your Honor. We'd just [37] ask her to tread with care here. We're approaching a hearsay objection, a hearsay issue with

a witness who is in the courtroom with us and is not testifying.

JUDGE PAYNE: Not approaching it. The question -- that's the problem with "let me set the context" questions because there's no control over it, ruling on a question by question basis and an answer by answer basis, but it's hearsay.

MS. BRANCH: Yes, Your Honor. I would offer that it's not being offered for the truth of the matter.

JUDGE PAYNE: Why are you offering it?

MS. BRANCH: That it's being offered to impeach Delegate Jones. But I will -- I will rephrase the question to avoid hearsay.

Q Based on your conversation with Delegate Loupassi, did you have an understanding as to whether he wanted precinct 207 in his district?

A Yes.

Q And what was that understanding?

A He didn't want it unless he had to have it.

JUDGE PAYNE: What's the difference between that and hearsay?

MS. BRANCH: Well, I think it's based on --

JUDGE PAYNE: -- hearsay. So let's see if we can -- why are you offering it? You say to impeach [38] Delegate Jones.

MS. BRANCH: Defendant-intervenors have offered that Delegate Jones has said that he -- that Delegate Loupassi wanted -- affirmatively asked for precinct 207 to be in his district, and Senator McClellan has a different recollection of that conversation.

JUDGE PAYNE: Well, was she a member of the conversation in which Delegate Jones asked Loupassi that?

MS. BRANCH: No, I don't think she was, Your Honor. But she did have conversation with Delegate Loupassi about precinct 207 that I think is directly relevant here.

JUDGE PAYNE: I'm not sure it is at this stage. You can call her back, perhaps, after Delegate Jones testifies and you set the framework, but right now, I think you're beyond the bound.

MS. BRANCH: Thank you, Your Honor. Q Did you want to lose precinct 207, Senator McClellan?

A No.

Q Did you have a choice?

A No, not if I wanted --

JUDGE PAYNE: Did she feel like she had a choice? Is that your question?

MS. BRANCH: Sure. A I felt that I didn't because --

[39] JUDGE PAYNE: That's enough.

THE WITNESS: Okay.

A No, I thought I didn't have a choice.

JUDGE PAYNE: If she wants to know why, she can ask why.

THE WITNESS: Okay.

JUDGE PAYNE: And then we'll --

Q And why is that?

JUDGE PAYNE: It will keep the conversation shorter and the examination smoother if you take it question by question and move it along that way.

MS. BRANCH: Yes, Your Honor.

JUDGE PAYNE: Yes, ma'am.

Q Why did you feel like you didn't have a choice?

A Because every time I tried to draw a map that included either all of 207 or a portion of 207, it pushed my district's black voting age population below 55 percent, and I did not believe that any recommendation to Delegate Jones that resulted in my district falling below 55 percent would be accepted by him.

Q Were Summit Court, Hilliard and Stratford Hall removed from your district?

A Yes.

Q Where are those areas located?

A Right here. So it's the northwest portion of the [40] district that's in white hashmarks.

Q What county are they in?

A Henrico.

Q And what is the racial composition of those areas?

A They predominately white.

Q Did you ever try to move those areas back into your district like you did with precinct 207?

A No.

Q And why not?

A Because it would have been counterproductive to my goal to keep 207, because if I brought those three

precincts back in, it would push the black voting age population down. And I've continued to try to keep as much of 207, and frankly 208, as I could. I was able to keep 208 in the final map. But if I had tried to bring Summit Court, Stratford Hall and Hilliard back in the district, that would have affected the black voting age population if I kept 208.

Q And did removing precinct 207 from your district split The Fan neighborhood?

A Yes.

Q Was precinct --

JUDGE PAYNE: Excuse me. Did you do any calculation as to what the black voting age populations were if you made the changes you're talking about as to [41] 207 and the three areas in Henrico? You said it would push it down. My question is do you recall how much it would have pushed it down?

THE WITNESS: I don't recall how much, because once it fell below -- once it fell below, I believed it wouldn't be accepted. So I don't remember exactly how far, but it was below 55 percent.

BY MS. BRANCH:

Q Was precinct 505 partially removed from your district?

A Yes.

Q And how was it split?

A You see the blue line that's sort of a straight line here and then there's like a little triangle. The part that was removed that's the white hashmarks is mostly the Oregon Hill neighborhood, and the yellow part at the top is mostly VCU, or is VCU, is a part of

VCU. The little white triangle is not really a residential area. It's part of the bridge and the -- the war memorial.

Q Was the racial composition included in your district and precinct 505 higher than the racial composition that was excluded?

A I'm not sure I understand your question.

Q Were you concerned at all about the precinct 505 split?

[42] A I can't answer that with a yes or no because when the map was originally introduced, 505 was split, and there were attempts to reunite it and put it in the 69th District, but that would have affected -- and now I can't remember. I think -- it would have affected Betsy Carr's black voting age population if all of -- and the population deviation if all of 505 went in 69. And so we tried to find -- if it's going to be split, let's find a logical place for it to be split. So the way it was finally split in map as signed by the governor in 5005 was actually suggested by Delegate Carr and myself. So I don't remember exactly where the line was in the map as originally introduced, but we did attempt to keep 505 whole, and when we couldn't meet the target criteria, we just said, well, what's the most logical place to split it.

Q And there -- when you say "target criteria," what are you referencing there?

A The 55 percent black voting age population and the 1 percent population deviation.

Q Shifting gears to the eastern side of your district, were precincts 701 and 702 added to your district?

A Yes.

Q And where are they located?

A They are the -- they are along the boundary between [43] my district and Delegate McQuinn. I've drawn a red line on the screen. They are north of 707.

Q What's unique about those two precincts?

A They are densely populated; predominately, if not exclusively, African-American residential areas.

Q Did you discuss the addition of those two precincts with any other delegates?

A Yes.

Q Who?

A First with Delores McQuinn, who represented the 70th District. She had -- she -- she very much wanted to keep --

JUDGE PAYNE: That's a -- I think it's a good point to make the point that the question is did you discuss. The answer is yes.

A Yes.

JUDGE PAYNE: If he wants to ask something further, she can ask it. Then the question can be framed. And if there's an objection, we'll have a basis for the objection. If there's not, then we will go on. So if you take hold of the examination, and I think it will move better that way if you do that. Rather than -- we're having a lot of answers that drag on and on and aren't really responsive to the questions that are being asked, and some of them are helpful information. Some of it's [44] not particularly helpful. So if you'd take hold, I would appreciate it.

MS. BRANCH: Thank you, Your Honor.

Q What was Delegate McQuinn's position on the issue of adding precincts 701 and 702 to your district?

A She wanted to --

MS. MCKNIGHT: Objection, Your Honor. Hearsay. We understand plaintiffs intend to offer Delegate McQuinn. So they may elicit testimony directly from her.

JUDGE PAYNE: What's your response to the hearsay objection?

MS. BRANCH: I'm asking Delegate -- or Senator McClellan what her understanding was based on their conversation.

JUDGE PAYNE: I understand that, but it's still hearsay.

MS. BRANCH: I'll rephrase, Your Honor.

JUDGE PAYNE: All right.

MS. BRANCH: Thank you.

Q Did you try to draw your district in a way that would not have included 701 and 702?

A Yes.

Q And what was the effect of that?

A It pushed my black voting age population below 55 percent.

[45] Q Did Delegate McQuinn used to represent precinct 701 and 702 in any capacity?

A Yes.

Q And in what capacity was that?

A As a delegate, as a city council member and as a school board member.

Q Let's now turn our attention to the Ratcliffe VTD. Was that added to your district?

A Yes.

Q And where is Ratcliffe located?

A Ratcliff is the northeast corner of the district. I drew a red line there. And it is next to Central Gardens and precinct 604.

Q And what county is it in?

A Henrico.

Q What's the racial composition of Ratcliff?

A Predominately black.

Q Is there a difference between the Henrico area -- Henrico County areas that were moved out of your district? That's Summit Court, Stratford Hall and Hilliard and Ratcliffe, which was added into your district?

A Yes.

Q And what's that difference?

A Ratcliff is predominately black. Summit Court, Stratford Hall and Hilliard are predominately white.

[46] Q Would you describe the difference between the racial populations in those two areas as stark?

A Yes.

Q Finally, where is precinct 204 located?

A 204 -- I just drew a red line through -- is on the west side of the district.

Q And it was added to your district, correct?

A Yes.

Q What's the racial composition of that precinct?

A Predominately white.

Q And you testified earlier that you felt you couldn't keep precinct 207 in your district. Is there a difference between precincts 207 and 204?

A Yes.

Q And what's that difference?

A 207 is a highly dense residential neighborhood, The Fan. 204 is not densely populated with residents. It -- there is one street that is part of The Fan, Monument Avenue, that makes up part of that precinct. There is --

JUDGE PAYNE: Where is 204?

THE WITNESS: 204 is --

JUDGE PAYNE: What are the boundary streets? Excuse me. I didn't ask that very clearly.

THE WITNESS: Okay. So you see in 208 where there's a little star. If you go straightly west, that [47] red line is Park Avenue. And it goes to -- this is the Boulevard. This is Broad Street. I believe this is Cleland maybe.

JUDGE PAYNE: Cleveland?

THE WITNESS: I think it's Cleland. It's either Cleveland or Cleland.

JUDGE PAYNE: Is it near Patterson, near the museum? There is a Cleland Avenue, but I don't think it's in that area.

THE WITNESS: Well, this is all closer to Broad Street. So the southern street is Park, up to the Boulevard and as you go north, you have Grace and Broad, and it goes beyond the Boulevard if you're on Broad.

JUDGE PAYNE: To what street?

THE WITNESS: Well, do you know -- I can't remember the name of the street, but there's the big building where Doug Wilder wanted to move the school board that's right next to --

JUDGE PAYNE: Atlantic Coastline -- old Atlantic Coastline Railroad?

THE WITNESS: I think so. It's --

JUDGE PAYNE: Apartments 3600?

THE WITNESS: Yes. Yes. Yes. Yes.

JUDGE PAYNE: That's all -- that is all -- I'm concerned because all of that -- about your testimony [48] because, I mean, I'm confused by it. Because from Monument to Park out beyond Boulevard and up that way seems to me to be fairly heavily populated --

THE WITNESS: Well, in --

JUDGE PAYNE: -- if you pick up all that area of that little tip over there that goes all the way to Broad Street.

THE WITNESS: But it's not as heavily populated as 207. And that -- the question --

JUDGE PAYNE: Oh, I see.

THE WITNESS: -- was the difference between 207 and 204. And so while 204 is populated, it does not have as many people or voting age population as 207.

Q Senator, if we take a step back and look at the voters who moved into your district and out of your district, are there any patterns?

A Yes.

Q How would you describe them?

A The precincts -- with one exception, which I'll come back to in a minute, precincts 207, Summit Court, Hilliard, Stratford Hall, the part of 505 that was moved out are predominately white, residential, densely populated areas. Precinct 301 was, I would say, a like-for-like swap with 604. And the 702, 701, the part of 703, Ratcliffe, were heavily densely populated black [49] neighborhoods. So I shifted east, lost white population and picked up black population.

Q Let me direct your attention to Plaintiffs' Exhibit 30.

A Is there a way to get the -- okay. Thank you.

Q Do you remember -- do you recognize this e-mail string?

A Yes.

Q And do you remember testifying about it at the last trial?

A Yes.

Q What is it about, briefly?

A The string, in its entirety -- Kirk Showalter is the voter registrar for the City of Richmond. Larry Haake is the voting registrar for Chesterfield County.

Kirk reached out to me, on behalf on both of them, to raise concerns about split precincts in Richmond and Chesterfield. And we attempted to draw maps that reunited the split precincts identified by those two individuals. And we -- so that's, I think, the beginning of the string that you can't see on the screen, or at least the beginning of the e-mail correspondence.

Okay. So it's not this document, but that was the beginning of the e-mail correspondence.

This e-mail is -- and we are talking about House Bill [50] 5001. We had made a change that was not included in House -- in 5001 as it passed the House, and Kirk Showalter was asking me why not. And I asked Delegate Jones and Kent Stigall why not and relayed the reason they gave me back to Kirk Showalter. And I think she's trying to figure out how to reunite the precincts. And the reason the change was not accepted is in the e-mail.

Q And what was that reason?

A Because the -- this change in particular she was asking about pushed the black voting age population in the 71st District to 54.8 percent.

Q And you testified that this e-mail exchange was about the House Bill that preceded the final map, which is House Bill 5001; is that right?

A Yes.

Q And were all the precinct splits in your district fixed in the final map in House Bill 5005?

A No.

Q Which ones were still split?

A If we go back to the prior document, or if I can remember off the top of my head, 505, 703 -- yeah. Okay. Thank you.

505, 703 are still split. And then that e-mail was not just about splits in my district. So there were precincts in other districts that remained.

[51] Q Did you vote for House Bill 5005?

A Yes.

Q Why?

A There is a -- an expectation in the House of Delegates that I think goes back to Jefferson or Mason or somebody; if you offer amendments to a bill, you are expected to vote for it. And I believed that having offered suggestions that were accepted, even though they all weren't, if I did not vote for House Bill 5005, as a member of the minority party, I would not be able to have an influence on legislation going forward, particularly legislation sponsored by Delegate Jones or any other member of the majority party.

Q Shifting gears to talk briefly about your election history. Did you win every election you ran in to represent the 71st District?

A Yes.

Q Were any of your House elections close?

A No.

Q What was the closest election you had?

A My initial primary. I won with 65 percent of the vote.

Q And the rest of the margins in all of your subsequent election history were bigger --

A Yes.

[52] Q -- is that right?

A Yes.

Q How long has the 71st District being represented by an African-American delegate?

A Since Virginia went to single member districts.

Q And do you know who that first delegate was?

A Benjamin Lambert.

Q Senator, did you receive electoral support from white voters when you represented the 71st District?

A Yes.

Q And have white voters in the 71st District voted for black candidates other than yourself?

A Yes.

Q Who?

A Kim Gray, who is now the city council member for the 2nd council district, which is all of the 200 precincts in the 71st. She was also elected to the school board.

JUDGE PAYNE: I think the question was who, and I think the answer would be sufficient to give the names, if you don't mind.

A Okay. Kim Gray, Jeff Bourne, Viola Baskerville, Cynthia Newbille, Ellen Robertson, Barack Obama.

Q That's good. Thank you.

A Okay.

Q If Delegate Tyler thought that her district, House [53] District 75, needed a black voting age population of 55 percent in order to preserve the ability to elect, would you take that to mean that District 71 also needed a 55 percent black voting age population?

A No.

Q Are you familiar with Delegate Tyler's district at all?

A Yes.

Q And is your district different from her district?

A Yes.

Q How so?

A Her district is more rural, has more prisons. So it has a large population of people who cannot vote. Mine, or the 71st, is urban, very densely populated. I think that's the biggest difference.

Q What's the partisan composition of your former district?

A It is very democratic. It was and is the most democratic district in the state when you look at the democratic performance index.

Q Does House District 71 have a significant student population?

A Yes.

Q Does it have a significant retiree population?

A Yes.

[54] Q Are House Districts 71 and 75 even remotely similar?

A No.

Q There are significant differences between the two?

A Yes.

Q Did you ever express a concern to Delegate Jones or anyone else about the black voting age population in your district falling too low?

A No.

Q Did you ever express a concern to Delegate Jones or anyone else about the black voting age population falling too low in any other majority black district?

A No.

Q Did you have that concern at all?

A No.

Q Was a black -- a 55 percent black voting age population needed for to you win reelection in the 71st?

A No.

Q Did you ever express a view that a certain percentage of black voters was needed in your district or in any other majority/minority district in order for minority voters to be able to elect their candidate of choice?

A No.

MS. BRANCH: No further questions. Thank you.

JUDGE PAYNE: Cross-examination.

MS. MCKNIGHT: Good morning, Your Honors.

[55] CROSS-EXAMINATION

BY MS. MCKNIGHT:

Q Good morning, Senator McClellan.

MS. MCKNIGHT: Brief point of just an administrative issue. I think we need something switched. Okay.

Q Good morning, Senator McClellan.

A Good morning.

Q We represent defendant-intervenors. I'm going to ask you some questions today about your testimony earlier today and about your district. The last we spoke was in 2015 trial so it's nice to see you, but I'm going to try to keep this brief.

A Thank you.

Q First, I'll ask to have Defendant-Intervenors' Exhibit 94, page 4 put up on the display. This should look familiar. You were just testifying about this map.

A Yes.

Q Now, I'd like to start by drawing your attention to precincts 604 and 603.

A Okay.

Q And I believe I may be able to draw a dot there so at least folks can see. We're talking about 604 and 603.

Now, it appears from the map that prior to redrawing, district 603 was in your district but 604 was not; is that [56] right?

A Yes.

Q And, now, you testified in deposition that uniting 603 and 604 made sense because of similar demographics. Is that fair?

A Yes.

Q And now I'd like to draw your attention to precinct or District 703. Let me clear my dots.

A Okay.

Q Now, you had testified earlier about a split in that precinct?

A Yes.

Q Now, I understood from your deposition testimony that you testified that the split is a natural boundary between communities of interest. Is that fair?

A Yes.

Q Still on District 703. I understood in your deposition that testified that Delegate McQuinn had a home in 703. Is it fair to say that the asterisk next to Delores L. McQuinn indicates her home in that district?

A It is her home, but I -- I believe she actually lives in 705.

Q Okay.

JUDGE PAYNE: You're talking about now or do you mean at the time?

[57] THE WITNESS: Both.

JUDGE PAYNE: What?

THE WITNESS: Both.

JUDGE PAYNE: So you say she never lived in 703?

THE WITNESS: She lives in the House that is that dot, and my understanding is that dot is actually in 705 and not 703.

JUDGE PAYNE: You mean the thing that's a star?

THE WITNESS: The star, yes. It's kind of on the border, but --

JUDGE PAYNE: It's split between the two or it is all in one or all in the other?

THE WITNESS: Her house is on the border between 703 and 705, but my understanding is the house itself is in 705.

Q And you testified at deposition in August in this matter that her home was in 703; is that right?

A I don't -- if you'd like to show me my transcript, I don't remember if I said 703 or 705.

JUDGE PAYNE: Show her the transcript.

MS. MCKNIGHT: Could we put it up on the screen for her to view? That may be easiest.

JUDGE PAYNE: Sure. As long as she can see it and it contains the question and the answer. If it's something incomplete or you need to see more, just say so.

[58] THE WITNESS: Thank you.

MS. MCKNIGHT: Thank you, Your Honor.

JUDGE PAYNE: Will you put it up?

MS. MCKNIGHT: This is page 17 of her August deposition. I mean, pardon me. Page 47 of her August 2017 deposition.

JUDGE PAYNE: Can you bracket that so we can read it and enlarge the question and answer you're talking about, please, ma'am?

MS. MCKNIGHT: Could you enlarge the lower half of page 47?

Q And lines -- Delegate -- pardon me. Senator McClellan, would you review lines 18 through 22, please?

A Actually, can you go back up?

Q Sure.

A And can I see more than this, because --

JUDGE PAYNE: How far -- do you need to go --

A So on line 9, I say she lives in 705. And that is and has always been my understanding, because 705 is part of Churchill, and if she did not live in 705, we

would have attempted to put 705 in the 71st District. So yes, down below, I say 703, but I misspoke there.

Q I understand. Okay. Thank you for clearing it up. Okay. Now we can go back to Plaintiffs' Exhibit 94, page 4. Now, moving south along your district to district [59] 505 --

A Yes.

JUDGE PAYNE: You said 505?

MS. MCKNIGHT: Correct. Precinct 505. Pardon me, Your Honor. I've put a red dot under it just for everyone's reference.

Q Earlier you testified that you and Betsy Carr suggested the split in 505. Did you mean to say that you suggested it to Delegate Jones?

A Yes.

Q And did Delegate Jones ever tell you that 505 could not be placed entirely in Betsy Carr's district?

A No, because the map we presented to him did not include 505 in all of one district or the other because when we drew a map that included 505 in one district or the other, it affected the black voting age population. So I never offered that as a suggestion to Delegate Jones that I can recall.

Q Moving back east in your district for a moment. You were discussing with Ms. Branch precinct -- a split in 707 -- I'm going to put a red dot under it for your reference.

A Yes.

Q You were describing a split in 707 and a split in Churchill, a division along Broad Street?

[60] A Yes.

Q And did you tell Delegate Jones that that split needed to be fixed?

A Yes.

Q Okay. And did he fix it?

A Yes.

Q Okay. Going west in your district back to precinct 208. I placed a dot under it for everyone's reference. You discussed with Ms. Branch that there was a split in 208 --

A Yes.

Q -- in HB 5001?

A Yes.

Q And did you tell Delegate Jones you wanted that split to be fixed?

A Yes.

Q And did he fix it?

A Yes.

Q You testified about precinct 207. Did you ever go to Delegate Jones and give him a proposed map that included precinct 207 in HD 71?

A I don't believe so, because every map that I drew that included 207, either in whole or in part, pushed the black voting age population of the 71st District over 55. So I knew he wouldn't accept it, and I did not offer, [61] knowingly, any recommendations that he would not accept.

JUDGE ALLEN: And how many recommendations did you give him, approximately, that you knew that he wouldn't accept?

THE WITNESS: I did not give him any that I did not think he would accept.

JUDGE ALLEN: Right. So how many did you not give him?

THE WITNESS: Oh. A lot. So I sat in the legislative services with the software and drew several -- I don't know the number, but it was a lot of different versions of the boundaries to try to keep as many neighborhoods together to address concerns that Delegate McQuinn and Delegate Carr and the two voter registrars brought to my attention to see if we could address all of those concerns. And with one exception, I did not show either Delegate Jones or Kent Stigall, who was the legislative services person working with him, I did not give them a map that I -- that did not meet the 55 percent black voting age population. And the exception was a mistake.

MS. MCKNIGHT: Thank you, Your Honor.

JUDGE ALLEN: Excuse me.

MS. MCKNIGHT: Thank you, Your Honor.

Q Now, going into the 2011 redrawing process, the [62] neighborhood called The Fan was split three ways, wasn't it?

A Yes.

Q And going out of the 2011 redrawing process, it was split three ways, wasn't it?

A A very different three ways.

Q Okay. Now, Senator McClellan, I appreciate I may be testing your memory a bit here. I'm going to be asking you a question about deposition testimony that you gave in this case in 2015.

A The deposition was in 2015?

Q Correct.

A Okay. I would appreciate it if you show me transcript pages when you ask your question.

JUDGE PAYNE: The technique actually doesn't do that. That's not how it it's done. The question is you ask the question. She gives an answer.

THE WITNESS: Okay.

JUDGE PAYNE: If the answer that she gives is inconsistent, then you show her the page and you say, In 2015, you were asked this question and you gave this answer; is that correct? And then we have -- and remember the fundamental rule; if you touch the king, you must kill him. That means it needs to be impeachment so that we don't waste time. Okay. That's just -- so she's going to [63] ask you a question. You just give the answer. If she thinks that you gave an inconsistent answer in 2015, she'll show you the deposition page and ask you did you say that then.

THE WITNESS: Okay.

JUDGE PAYNE: Okay?

THE WITNESS: Thank you.

Q Senator McClellan --

A Yes.

Q -- to determine who the candidate of choice was of the majority of the minority community in your district, you would probably have to look at results from primary elections. Is that fair to say?

A I'm sorry. Can you repeat that question?

Q Absolutely. In order to determine who the candidate of choice was of the majority of the minority community in your district, you would probably have to look at the results from primary elections; is that right?

A If you are talking about House of Delegate elections, yes. If you are talking about other elections, then not necessarily.

Q Senator McClellan, did you ever tell Delegate Jones that you did not think HD 71 needed 55 percent BVAP to be a performing majority/minority district?

A I don't believe so, because I -- when I was told it [64] had to meet 55 percent, I didn't argue.

Q And did you ever provide Delegate Jones any analysis showing that HD 71 did not have racially polarized voting?

A He didn't ask for one.

JUDGE PAYNE: Excuse me. Senator McClellan, there's a question on the table and then -- and the answer was did he ask for it or not. Yes or no.

THE WITNESS: Okay.

JUDGE PAYNE: So that's a yes or no answer. And we -- embellishment simply extends the examination. If a lawyer wants to know more, they'll ask, and if the cross-examining -- your lawyer sponsoring your testimony wants to ask more, they'll do it.

THE WITNESS: Okay.

JUDGE PAYNE: You don't need to augment it and advocate.

THE WITNESS: Okay. I'm not used to being on this side so I apologize.

JUDGE PAYNE: You're used to questioning. Not answering.

THE WITNESS: Yes.

Q So I'll ask again, Senator McClellan. Did you provide Delegate Jones any analysis showing that HD 71 did not have racially polarized voting?

A No.

[65] Q And, Senator McClellan, at the time you were a delegate representing HD 71, you voted for the plan as enacted HB 5005; isn't that right?

A Yes.

MS. MCKNIGHT: Thank you very much for your time.

JUDGE PAYNE: Any redirect?

MS. BRANCH: Yes, Your Honor.

REDIRECT EXAMINATION

BY MS. BRANCH:

Q Senator McClellan, you were asked on cross about whether you proposed -- or whether you gave Delegate Jones any maps that kept precinct 207 in the 71 District. And I think you said on cross that you did not because it would have brought the BVAP above 55 percent. Did you mean to say under in 55 percent?

A I meant to say under, yes.

Q Thank you. When -- you testified on cross that you didn't argue with Delegate Jones about the 55 percent black voting age population threshold. Why not?

A It wouldn't have done any good. I was clearly told, If you meet these two criteria, I will be open to

suggestions. I took that to mean if I made suggestions that did not meet 1 percent population deviation and 55 percent black voting age population, he wouldn't be [66] open to it. I didn't want to waste my time arguing over something that had already been decided.

Q And was it your experience that when a map was proposed that had your district at below 55 percent black voting age population, it was not accepted?

A Correct.

Q Did Delegate Jones ask you for any racially polarized voting analysis at any time during the process?

A No.

MS. BRANCH: No further questions. Thank you.

JUDGE PAYNE: Can she be permanently excused or do you wish to recall her?

MS. BRANCH: We wish to reserve the right to recall her.

JUDGE PAYNE: Well, then she needs -- is she under subpoena or do you have her here by compulsion or what? How do we deal with that?

MS. BRANCH: She is under subpoena, I believe.

JUDGE PAYNE: All right. Then you are not released from your subpoena. May she be excused temporarily until you give her notice so she can go about her business?

MS. BRANCH: Yes, Your Honor.

JUDGE PAYNE: Knowing that the onus of getting ahold of her in time is on you, and if you don't do it, [67] that's just the way things are.

MS. BRANCH: Yes, Your Honor.

THE WITNESS: I'll be across the street, Your Honor.

JUDGE PAYNE: Just give -- make sure they know to get ahold you you.

THE WITNESS: Yeah, they do. Thank you.

JUDGE PAYNE: More than you want.

THE WITNESS: Thank you.

(Witness stood aside.)

MS. KHANNA: Your Honor, plaintiffs would like to call Delegate Matthew James to the stand.

JUDGE PAYNE: You, I hope, were listening, and the witness was listening, about the previous admonitions. Testimony is best presented by a question, a direct answer and a follow-up, and then we don't get into rambling and then having to cure errors that occur because there is an extensive narrative. And I'm asking you to take the lead in that situation, even if you need to cut the witness off and say all right, let me follow up or whatever.

MS. KHANNA: Yes, Your Honor. Thank you.

JUDGE PAYNE: Because you know what's permissible and what's not. They don't always know.

MS. KHANNA: Yes, Your Honor.

[68] JUDGE PAYNE: Come up and be sworn, sir.

MATTHEW JAMES,

called at the instance of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. KHANNA:

Q Good morning, Delegate James.

A Good morning.

Q Could you please state your name for the record and spell your last name?

A Matthew James. J-A-M-E-S.

Q Are you currently a delegate with the Commonwealth of Virginia?

A Yes, I am.

Q And what district do you represent?

A I represent the 80th District.

Q And where did you attend high school?

A Indian River High School in Chesapeake, Virginia.

Q And where did you attend college?

A I spent some time at the Naval Academy in Annapolis, Hampton University in Hampton.

Q And did you attend graduate school as well?

A Yes. I attended Northwestern University, Kellogg School of Management, where I received my MBA.

Q What is your current occupation other than as a [69] delegate?

A I run a seven city/county economic development organization. We do the workforce development and business expansion for the cities of Hampton, Newport News, James City County, Gloucester, Poquoson, York and Williamsburg.

Q And what is your role there?

A I'm the president and CEO of that organization.

Q How long have you been in that role?

A Twelve years.

Q When did you first run for elected office?

A I ran in 2009.

Q And what district was that?

A For the 80th District.

Q What is your party affiliation?

A I'm a democrat.

Q Was there a democratic primary in 2009?

A Yes. We had a three party race.

Q Do you recall who your opponents were?

A Yes. My opponent was a sitting city council person, Doug Smith, and the civic league person, Buddy Sharp, of the largest civic league in my district.

Q And I take it that you won that three party primary?

A Yes.

Q Or that three candidate primary?

[70] A Yes. I won with a vote total of a little south of 50 percent.

Q Did you run in a contested general election in 2009?

A Yes, I did.

Q And who was your opponent then?

A My opponent was Jennifer Lee.

Q Was she a republican?

A She was a republican.

Q Do you recall approximately how much of the vote you won?

A I believe I won around 68 percent of the vote.

Q Have you participated in a democratic primary since 2009?

A No, I have not.

Q Have you run in a contested election since 2009?

A No, I have not.

Q Delegate James, do you recall that in the first half of 2011, the House of Delegates took up the process of redistricting?

A Yes, I do.

Q And you were a freshman delegate at that time?

A Yes.

Q Do you know who was responsible primarily for the 2011 redistricting process for the House of Delegates?

A Rephrase the question.

[71] Q Do you know which delegate was primarily responsible for the redistricting process in 2011?

A My observation was most of the conversations on the floor of the House were conducted by Delegate Jones.

Q Delegate James, I'll represent to you that Delegate Jones has testified before this Court that you had significant input into the drawing of your district. Is that correct? Did you have significant input the configuration of District 80?

A As I testified in the deposition, most of my conversations were with Delegate Spruill.

Q Did you have significant --

JUDGE PAYNE: But the question was did you have significant input, even if it wasn't with Spruill -- I mean with Jones?

THE WITNESS: I apologize, sir.

JUDGE PAYNE: Do you think you did? Let's start again.

Q Would you like me to repeat that question?

A Please -- I'm sorry. I'm not -- this is my first time testifying so I'm a little nervous. I apologize.

Q Did you have significant input into the drawing of your district, District 80?

A No, not really.

Q Did you provide any input to Delegate Jones on how [72] your district should be configured?

A Not to Delegate Jones.

Q Did you tell Delegate Jones that you would like him to add any areas to your district?

A Not directly.

Q Did you tell him indirectly?

A No.

Q Did you tell Delegate Jones that you didn't want him to add areas from his district, District 76, to yours?

A No.

Q Did you express any issue -- any opinion on the issue to Delegate Jones?

A No.

Q Did you have any conversations with Delegate Jones about the number of black voters in your district?

A No, I did not.

Q Did you tell Delegate Jones that he should increase the black voting age population of your district?

A No, I did not.

Q Did you have any conversations with Delegate Jones about the configuration of District 80 prior to the enactment of HB 5005?

A Not to my recollection.

Q Did you have any conversations with Delegate Jones about the configuration of any other districts prior to [73] the enactment of HB 5005?

A No, I did not.

Q Did you ever have a one-on-one meeting with Delegate Jones about redistricting?

A No, I did not.

Q Did you discuss the 2011 redistricting process with anyone else prior to the enactment of the bill?

A As I said, my conversations were with Delegate Spruill.

Q And how many conversations are you referring to?

A Primarily one, based on my recollection.

Q And can you tell me the circumstances of that conversation?

A Basically he explained to me the process, and I basically said, as a freshman, I was proud and I'll

serve whatever my district configuration works out to be.

Q And was that a formal meeting that was set up --

A No. It was a telephone call.

Q He had called you?

A Yes.

Q And do you recall approximately how long that telephone call lasted?

A Maybe 8 to 12 minutes.

Q Did you provide any input on the configuration of your district to Delegate Spruill during that phone [74] conversation?

A Not to my recollection, no.

Q Did he ask for your input?

A Not really. I'm sorry. No.

Q Did you discuss the configuration of your district, District 80, at all in the course of that conversation?

A The conversation we had was primarily process.

Q Did you discuss the 2011 redistricting process with anyone else --

A No.

Q -- prior to the enactment of HB 5005?

A Not to my recollection, no.

Q Delegate James, can you say with certainty whether you had any substantive conversations with anyone about the configuration of District 80 during the redistricting process?

A Rephrase the question, please.

Q You mentioned a few times that you don't recall ...

JUDGE PAYNE: Do you know what that's called? Flagellating a dead equine. Let's go.

MS. KHANNA: I'll move on, Your Honor.

JUDGE PAYNE: I think the point has been made.

MS. KHANNA: Understood. I'd like to please put on the screen Defendant-Intervenors' Exhibit 94, page 10.

[75] Q Delegate James, I'm showing you what has been marked as Exhibit 94 by defendant-intervenors. Have you seen this particular map before?

A Yes, I have.

Q And what is it?

A This is the map showing my prior configuration of 80 before the redistricting and, in different colors, the new redistricting boundary lines.

Q So you understand how to read this map in terms of the various cross-hatching and colors?

A Yes, I do.

Q And I won't reiterate that for the Court as long as that's clear.

Were there changes made to District 80 during the 2011 redistricting process?

A Yes.

Q Pretty substantial changes; is that right?

A They were significant. I don't know if they were substantial.

Q Do you know why any of these changes were made?

A It was my understanding, based on the conversation that I heard on the floor of the House and in caucus meetings, that this was done in order to satisfy the laws of the redistricting process.

Q Did you understand anything more than that?

[76] A I wasn't involved in the redrawing of the lines very significantly. So I made the assumption that this was done in order that we had fair and equitable lines throughout the Commonwealth of Virginia.

Q Did you know at the time or did you have any other -- any understanding, specific understanding, about why any specific changes were made?

A It was my understanding it was based on the census --

Q So --

A -- demographics.

Q So the question was did you know why any specific changes were made?

A No. I wasn't involved. I was not personally involved in any of those details.

Q And did you provide any input to anyone at any time suggesting any of these changes?

A No, I did not.

Q Delegate James, prior to the enactment of HB 5005, did you know what the black voting age population of your district was?

A No, I did not.

Q Prior to the enactment of HB 5005, did you know -- or did you have an understanding of precisely what the Voting Rights Act would have required of the configuration of your district?

[77] A No, I did not.

Q Did you ever discuss with any delegates whether a 55 percent black voting age population would be needed in your district?

A No, I did not.

Q Did you ever discuss with any delegates whether a 55 percent black voting age population would be needed in any of the House of Delegates districts?

A No, I did not.

Q How did you vote on House Bill 5005?

A I approved it.

Q And why is that?

A My understanding was that this was what we had to do. It would satisfy the requirements. And my focus was to move forward and to reach out to my new constituents and help serve them as a delegate in the House of Delegates.

MS. KHANNA: Thank you, Delegate James. I have no further questions.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. RAILE:

Q Good morning, Delegate James.

A Good morning.

Q I'm Richard Raile and I represent the intervenor-defendants, and I'll try to keep this brief.

[78] You testified that you didn't have any discussions about the configuration of HD 80; is that right?

A That is correct.

MR. RAILE: Can we put up Defendant-Intervenors' Exhibit 94, page 10?

Q Did you see, during the redistricting process, any draft maps that moved District 80 west into the precincts of Silverwood, Churchland, Fellowship, Balley Creek, E.W. Chittum School or Jolliff Middle School? Did you ever see a version of a map that moved HD 80 into any of those precincts?

A I don't recall seeing that draft.

Q Am I correct that you do not have any reason to think that the drawing of HD 80 is racially discriminatory?

A That is correct.

MR. RAILE: No further questions.

THE COURT: Any redirect?

MS. KHANNA: No, Your Honor.

(Witness stood aside.)

THE COURT: All right.

MS. BRANCH: We would call Algie Howell to the stand.

THE COURT: How long is that witness' testimony going to be, do you think?

MS. BRANCH: Approximately 15 minutes, Your [79] Honor.

THE COURT: How are you doing? Do you need to change court reporters now? I think we'll take a 20-minute recess and change court reporters, then.

(Recess taken.)

[80] ALGIE T. HOWELL, JR.,

a witness, called at the instance of the plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. BRANCH:

Q Good morning, Mr. Howell.

A Good morning.

Q Can you please state your full name for the record.

A Algie T. Howell, Jr.

Q And can you spell your last name, please.

A H-o-w-e-l-l.

Q Where are you currently employed, Mr. Howell?

A I'm currently retired.

Q And did you once serve in the House of Delegates?

A Yes, I did.

Q When was that?

A From 2003 to 2'14.

Q To 2014?

A Yes.

Q Did you retire from the House in 2014?

A No.

Q What did you do after?

A I resigned from the House of Delegates in order to be appointed to the parole board for the State of Virginia.

Q What district did you represent in the House of Delegates?

[81] A The 90th House District.

Q And where is that located?

A It's currently a part of Norfolk and Virginia Beach.

Q Are you a native Virginian?

A Yes, I am.

Q Where were you raised?

A In a little town called Holland, Virginia now a part of the City of Suffolk.

Q Are you a Democrat or Republican?

A I'm a Democrat.

Q When did you first run in an election for the House of Delegates?

A In 2003.

Q Have you run in any democratic contested primaries?

A No.

Q Have you run in any primaries where you had an opponent?

A Yes.

Q And were any of your primary election opponents white?

A Not in the primaries.

Q Were they all African American?

A Yes.

Q Were any of your primary elections close?

A No, they were not. They were all landslides.

Q What about your general elections, were those close at all?

[82] A No, they were not.

Q How long has the 90th House District been represented by an African-American delegate?

A The best I can recall was back in the '60s when Dr. William P. Robinson for this seat, and he won that election.

Q What was your role in the 2011 redistricting, Mr. Howell?

A I did not have much of a role in the 2011 redistricting.

Q Were you a member of the six-person redistricting subcommittee?

A Yes, I was.

Q And what was your role in that committee?

A It was minimum. I didn't exactly have a role.

Q Did you ever draw any maps of any House districts, yours or others?

A No, I did not.

Q Did you ever discuss your district with Delegate Jones?

A On one occasion after I had seen the redistricting map and noticed that some of the areas that I had represented had been removed from the 90th District.

Q So you spoke with Delegate Jones after the map had already been drawn; is that correct?

A The best I can recall. That's the first time that I saw the map.

Q And did you ever talk to Delegate Jones prior to seeing a new map of your district?

[83] A Not that I can recall.

Q Who initiated the conversation between you and Delegate Jones?

A I think I did after I saw the map, the redrawing, and I was very concerned about some areas that had been removed from the 90th. That's when we had a conversation.

Q How long did the conversation last?

A It wasn't very long.

Q Delegate Jones has testified that you had extensive input into the drawing of your district. Did you?

A No.

Q Did you have extensive input in the drawing of any House District?

A No.

Q Let's discuss the changes that were made to House District 90. You mentioned earlier that you had some concerns. What were those?

A There -- my major concern, I guess, was Norfolk State University which part of that was shifted over to the -- it was split over to the 89th District, and Union Chapel, a district -- well, an area that I had worked with those people since the early '60s in the civil rights

movement. I knew most of them. They were very dedicated people, and also all of the areas in Chesapeake had been removed from my district.

Q Is Union Chapel predominantly black?

[84] A Yes.

Q Did you tell Delegate Jones that you didn't agree with the changes you've just described?

A Yes, I did.

Q And did he accommodate your concerns in the final map?

A We talked about the area, basically about Norfolk State, Park Avenue that was running along there which, to the right of that Booker T. Washington High School was also in that area, and Booker T. Washington High School was taken out of the 90th District, but any changes that were made were very minor, and I think there was -- it was along Park Avenue. I'm not sure of all the details. It's been a long time.

Q I understand. Was Union Chapel removed from your district in the final map?

A Yes.

Q Was Norfolk State University split between your district and House District 89 in the final map?

A Yes.

Q Why did you want to keep Union Chapel in your district?

A Well, I had known those people for a long time prior to modern-day history. I had been the president of the Norfolk chapter of the Southern Christian Leadership Conference, an organization that Dr. King

headed up, and I had worked with them and a number of other people, not just in Union Chapel but in that surrounding area in terms of trying to make the city a [85] better place. They were dedicated people. I visited the church out there often, and I knew most of the people, and I think they knew me, too.

Q Did you ultimately vote for the final redistricting plan, House Bill 5005?

A Yes, I did.

Q Why?

A I've been asking myself that question for a long time. I wondered why I did, but it would have been simply a protest vote if I had voted against it because I knew the outcome, what it was going to be anyway, so rather than to just try to cause disruption, I just went along with it.

Q Delegate Jones has testified that you supported a 55 percent fixed racial target. Did you?

A No.

Q Did you ever express any concern to Delegate Jones or anyone else about the black voting-age population in your district falling too low?

A No, I was never concerned about that. I knew that I was there to represent all the people, both black and whites and Hispanics and others, and I was not concerned about whether or not the percentage was -- the majority was black or not.

Q Did you ever express concern to Delegate Jones or anyone else about the black voting-age population falling too low in any other House district?

[86] A Not that I can recall, no.

Q Did you get electoral support from white voters?

A Yes, I did. As a matter of fact, in Virginia Beach, the mayor of Virginia Beach, it was a Republican, he endorsed me, and I had a number of people, whites throughout both districts in Chesapeake, Norfolk, and Virginia Beach when it was three areas, they supported me. I never considered whether or not there was a majority of blacks. I wanted to represent the people.

Q Did you ever tell Delegate Jones that your district or any other district needed a 55 percent black voting-age population as a fixed racial target?

A No, I did not.

Q Did you ever discuss black voting-age population in any context with Delegate Jones?

A No.

MS. BRANCH: No further questions. Thank you.

JUDGE PAYNE: Any questions?

CROSS-EXAMINATION

BY MR. RAILE:

Q Good morning, Delegate Howell.

A Good morning.

Q I understand that you had some involvement in the civil rights movement?

[87] A Yes.

Q What was that involvement?

A I was the president of the Norfolk chapter of the Southern Christian Leadership Conference. We were in the process of -- as you probably recall, May 17th, 1954, when the Brown v. Board of Education decision

was handed down, most of the schools were not desegregated, and we were working in an attempt to get them integrated.

Q Was that experience part of what inspired you to run for the House of Delegates?

A I don't think so.

Q You don't think so?

A No.

Q Did you fight for civil rights in your time in the House of Delegates?

A Well, the demonstrations had just about subsided by that time, but I've always supported civil rights, even as a delegate, yes.

Q So during your time as a delegate, you did fight for civil rights; is that right?

A I've always --

JUDGE PAYNE: He said supported, I think.

MR. RAILE: Okay.

Q And your role in the 2011 redistricting was very minor; is that correct?

[88] A That's correct.

Q Let's look at your district. Let's pull up Defendant-Intervenor's Exhibit 94 at page 12. Do you recognize this map?

A Yes, I do.

Q Do you understand how the coloring and the hatching works?

JUDGE PAYNE: Why don't you tell him --

Q Do you understand that the yellow portions are your district after the 2011 redistricting and that the crosshatch portions are the portions of your district before the 2011 redistricting?

A What was that question again?

Q Do you understand that the yellow portions of the district --

JUDGE PAYNE: Solid yellow.

Q That's the district after the 2011 redistricting and the enacted plan; is that your understanding?

JUDGE PAYNE: Just the yellow part?

MR. RAILE: Both the yellow and the crosshatch and yellow --

JUDGE PAYNE: I think that's what's confusing him. Everything in yellow, whether it's plain yellow or crosshatched, was what? Was the district before redistricting; right?

MR. RAILE: The yellow district is the district after [89] redistricting, that's my understanding of the map.

Q Does that look right to you?

A I don't think so, because this is Chesapeake, is it not? Those areas were --

Q Let's walk around it. Do you see this precinct, College Park, that I just pointed to?

A Yes, I see College Park.

Q Is that in your district in the enacted plan of 2011?

A I don't think so.

Q You don't think so. And Sherry Park, is that in your district in the enacted plan?

A I don't think so.

Q You don't think so, okay. Is Davis Corner right here in your precinct after the enacted plan?

A No.

Q Is Barron Black in your district after the enacted plan?

A No.

Q Is Sherwood School in your district after the enacted plan?

A No.

Q Let's -- actually, is Chesterfield in your district after the enacted plan?

A Chesterfield --

Q Which I just pointed to down here.

A Chesterfield Heights, I believe that is, yes.

[90] Q You believe that is, okay. Is Union Chapel in your district after the enacted plan?

A No.

Q Was that taken out?

A That was taken out.

Q That is what you just testified to; correct?

A Yes.

Q Is Brambleton in your district in the enacted plan? This district down here.

A I'm trying to see it here.

JUDGE PAYNE: Are you all in dispute about what these mean, these things --

MR. RAILE: I'm --

JUDGE PAYNE: Wait just a minute. I'm under the impression from your indicator, your legend, that everything in yellow, whether it is crosshatched or not, was the enacted plan.

MR. RAILE: That's my understanding, too, Your Honor.

JUDGE PAYNE: And everything that's crosshatched, whether it's in yellow or not, was in the old district?

MR. RAILE: That's my understanding, too, Your Honor. Let's look at a different map --

JUDGE PAYNE: Do you agree with that, Mr. Hamilton?

MR. HAMILTON: I do. There's no dispute about the map. It's not my witness so it's not --

[91] JUDGE PAYNE: I understand that. Thank you.

MR. RAILE: Let's look at Intervenors' Exhibit 91 at page 180. I'm not sure how to clear.

JUDGE PAYNE: What exhibit is this?

MR. RAILE: This is Intervenors' Exhibit 91 at page 180.

Q And, Delegate Howell, do you recognize the district in this image?

A Yes, I do.

Q And do you understand that this is House District 90 in the enacted plan?

A That's not my understanding, because Chesapeake, this area here that I'm looking at, was taken out.

Q Is it your belief that Chesterfield was taken out in the enacted plan?

A Chesterfield --

JUDGE PAYNE: It's not Chesterfield, it's Chesterfield -- what is it? -- Heights. There's a difference between Chesterfield and Chesterfield Heights, I think, he's saying.

Q Okay. So is this -- do you understand the green area here -- I'm trying to draw it to be the borders of your district after the 2011 redistricting. Does that look about right to you?

MS. BRANCH: Objection, Your Honor. Object to the [92] form of the question. This is not a memory test, and the map is not in dispute.

JUDGE PAYNE: Well --

MR. RAILE: I'm trying to lay a found --

JUDGE PAYNE: Excuse me just a minute. Your objection is what?

MS. BRANCH: The map is not in dispute.

JUDGE PAYNE: I know, but the question is.

MS. BRANCH: Mr. Howell has not seen this map before. This appears to just be a memory test based on his memory. There's no dispute about what his district looked like after redistricting.

JUDGE PAYNE: What do you have to say in response to her objection?

MR. RAILE: My response is I'm trying to lay the foundation and see if there is foundation. I believe he sought --

JUDGE PAYNE: Objection overruled. I think he's on cross-examination. It's fair game to assess whether the witness knows the boundaries he's been talking about or not.

Q So, again, to clarify, I'm just trying to identify whether your understanding comports with my understanding which is that this green border reflects the boundary of your district after the 2011 redistricting.

A No, I don't think it does.

[93] Q Okay. Let me ask you a few other brief questions. Can you identify where Norfolk State University is on this map? I believe you testified about that a few minutes ago.

A Yes.

JUDGE PAYNE: And on this map, you are talking about Defendant-Intervenors' Exhibit 91, page 180; is that what you are doing?

MR. RAILE: That's right.

THE WITNESS: This writing here is very small. I can't see it.

JUDGE PAYNE: Would it help you, sir, if I gave you a book that had maybe a little bit bigger picture on it?

THE WITNESS: It certainly would.

JUDGE PAYNE: Why don't you take a crack at this and see if it helps. It's not a whole lot bigger, but I can read it, and it has to be pretty good for me to read

it. Can you read that and see it any better, because it's the same thing but the print on the screen is smaller. And I think we can get you a magnifying glass if you need one. Does the print size on that help you, sir?

THE WITNESS: It helps some, but I'm trying to see here where Norfolk State University is, and I'm having trouble -- oh yeah, I see it now. Okay, I can see Norfolk State now.

Q You can see the university; is that right?

[94] A Well, I see the writing Norfolk State University.

Q Are you able to point where that is on the computer screen here?

A It's right around here.

Q We can set the map aside at this time. Your understanding is that the racial makeup in House District 90 was about the same before the 2011 redistricting as it was after; is that correct?

A That's correct.

Q Your understanding is there wasn't an influx of whites or blacks into or out of your district; is that correct?

A That's correct.

Q Who is Delegate Lionell Spruill?

A Who is he?

Q Yeah, who is he?

A He was a delegate that represented part of Chesapeake.

Q Did he have a role in the 2011 redistricting?

A I don't know.

Q You don't know. Who is Delegate Johnny Joannou?

A He was a delegate in the House of Delegates. He's now deceased.

Q And he was a member of the Democratic party; is that correct?

A That's correct.

Q He often voted with the Republican delegates, though; [95] isn't that correct?

A I'm not sure about that. I don't know.

MR. RAILE: You're not sure. No further questions.

JUDGE PAYNE: Any redirect?

MS. BRANCH: Very brief, Your Honor.

REDIRECT EXAMINATION

BY MS. BRANCH:

Q I'd like to direct your attention to Defendant-Intervenors' Exhibit 91, page 180. This is the map we were just looking at.

JUDGE PAYNE: We need to get the book back.

MS. BRANCH: We actually probably don't need the book for what I'm going to do.

Q Delegate Howell, this area here that I just marked, is that Union Chapel?

A Yes.

Q And that was taken out of your district?

A Yes, it was.

Q Right here where I put a dot, is that Booker T. Washington High School?

A Yes, it is.

Q Did you testify about that earlier?

A Yes.

Q That was removed from your district?

[96] A Yes, it was.

Q And this, that area there that I just marked, is that Chesapeake?

A Yes, that's Chesapeake.

Q And that was removed from your district; right?

A Yes. All of Chesapeake was.

MS. BRANCH: No further questions. Thank you.

JUDGE PAYNE: Can he be excused permanently?

MS. BRANCH: Yes, he may, Your Honor.

MR. RAILE: Yes, Your Honor.

JUDGE PAYNE: Thank you very much for giving us your testimony. You're excused to go about your business, sir. You are free to remain in the courtroom if you'd like to, but you don't have to.

THE WITNESS: Thank you.

JUDGE PAYNE: Your next witness?

MS. KHANNA: Plaintiffs call Delegate Delores McQuinn to the stand, please.

DELORES L. McQUINN,

a witness, called at the instance of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. KHANNA:

Q Good morning, Delegate McQuinn.

[97] A Good morning.

Q Can you please state your full name for the record.

A Yes. Delores L. McQuinn.

Q Can you please spell your last name.

A M-c-Q-u-i-n-n.

Q Are you currently a delegate for the Commonwealth of Virginia?

A Yes.

Q Which district do you represent?

A I represent the 70th House District.

Q What is your current occupation other than as a delegate?

A Associate minister at New Bridge Baptist Church.

Q When did you first run for elected office?

A In the '90s, early '90s. I was appointed to the school board in '92 and then ran in 1993.

Q Which school board was that?

A Richmond city school board.

Q How long were you on the school board?

A From 1992 until 1998.

Q Did you hold any other elected positions prior to becoming a delegate?

A Yes. And then I ran for Richmond City Council.

Q How long did you serve on the Richmond City Council?

A For ten years.

Q When did you first run for the House of Delegates?

[98] A In 2009.

Q And that was in District 70?

A Yes.

Q What is your party affiliation?

A Democrat.

Q Was there a democratic primary in 2009?

A Yes.

Q And do you recall approximately what share of the vote you received?

A Yes. I received 83 percent of the vote.

Q Was there -- I believe that was a special primary that was --

JUDGE PAYNE: You all were talking over each other.

THE WITNESS: Sorry.

Q I was just asking, I believe the primary you just mentioned was a special primary held to fill an open seat; is that right?

A Yes.

Q Was there a special general election that followed that primary?

A Yes.

Q And you ran unopposed in that special general election; is that right.

A Yes.

Q Did you run for reelection then in 2009 during the regular [99] election cycle?

A Yes.

Q Was there a Democrat primary at that time?

A Yes.

Q There was a Democratic primary in the regular election cycle after your initial --

A No, I'm sorry. Let me back up.

Q Sure.

A I ran in 2009 in the general election, and there was opposition independent.

Q There was a contested general election.

A Yes.

Q Your opponent was a member of the independent party; is that right?

A Yes.

Q Run as an independent. Do you recall approximately what share of the vote you received in that election?

A I think around 78 percent.

Q Have you run in a contested election since 2009?

A Yes.

Q And when was that?

A This year, 2017, in the primary in June.

Q You had a contested Democratic primary.

A Yes.

Q Do you recall who your opponent was?

[100] A Yes, Alex Mejias.

Q I take it you won that primary?

A Yes.

Q Do you recall approximately the percentage of the vote that you received?

A 82 percent of the vote.

Q And are you being challenged in the upcoming general election in House District 70?

A No.

Q Delegate McQuinn, do you recall that in the first half of 2011, the House of Delegates took up the redistricting process?

A Yes.

Q And do you know which delegate was primarily responsible for the 2011 redistricting process?

A Yes.

Q Who was that?

A Delegate Chris Jones.

Q Did you ever have any meeting with Delegate Jones about redistricting?

A I had an initial meeting with Delegate Jones and Delegate Betsy Carr and Delegate Jennifer McClellan.

Q Do you recall where that meeting took place?

A Legislative Services, I think.

Q Do you recall what was discussed during that meeting?

A It was more a presentation of our lines that were drawn [101] and what was presented to us at that particular time.

Q Anything else that you remember about the nature or the substance of that meeting between -- that took place between Delegate Jones, you, Delegate Carr and Delegate McClellan?

A No. I don't recall a lot that occurred in that meeting. I do know that there was maybe some limited discussion, and Delegate McClellan and myself had to work out some logistics because of the bordering of the lines.

Q Did you ever meet with Delegate Jones one on one to discuss redistricting?

A No.

Q Did Delegate Jones ever ask for your input on how your district should be configured?

A Not that I recall.

Q At any point, did you provide Delegate Jones input on how your district should be configured?

A No.

Q Did you ever tell Delegate Jones that you were pleased with the final product when it came to your district?

A No, I don't think so. I don't recall.

Q Did you ever --

JUDGE PAYNE: I'm sorry, your answer was what?

THE WITNESS: I don't recall.

JUDGE PAYNE: You don't recall.

THE WITNESS: No.

[102] Q Did you ever tell him that you were displeased with the final product of your district?

A No.

MS. KHANNA: Can we please put up Defendant-Intervenor's Exhibit 94, page three.

Q Delegate McQuinn, is this a map of District 70?

A Yes.

Q And have you seen this map before?

A Yes.

Q Let me just walk through what the different shaded areas represent. Anything in yellow is currently in House District 70. The portion that is yellow and crosshatched existed in the district before the 2011 redistricting, and the yellow portion that is plain yellow is the portions that were added.

Those portions that are crosshatched in white are the portion of the district that were excluded from the district during the 2011 redistricting process. Does that -- do you feel like you can understand that --

A Yes.

Q So do you see at the top, toward the top of the district, a little star that has your name by it?

A Yes.

Q Is that your residence there?

A Yes.

[103] Q Do you know what VTD your residence is in?

A 705.

Q This map reflects that certain changes were made to your district during the 2011 redistricting process; is that right?

A Yes.

Q Did you have any concerns about those changes?

A Yes.

Q What was your primary concern?

A My primary concern was the expanded area of Chesterfield County, which would be the south of my district, and then 701 and 702 which I had represented a very long time. I had concerns about losing those individuals.

Q Why were you concerned about losing 701 and 702?

A Because they were a part of my school board and district that I had represented way over probably 15 years.

Q And do you know the racial composition of 701 and 702?

A Predominantly African American.

Q Did you ever express the concern about losing 701 and 702 to Delegate Jones?

A No.

Q Why not?

A Just didn't feel like I had an opportunity to do that.

Q Did you ever express your concern about losing VTD 701 and 702 to anybody else?

A Yes.

[104] Q Who did you express it to?

A To Delegate McClellan.

Q Do you have an understanding about why you lost those VTDs?

A My understanding, in order to make her numbers work, that I would have to lose some of the African-American population in that area, and it would move her, I guess, further east. Her district had to move further east; therefore, I had to lose some as a result of that.

Q When you say we had to make her numbers work, what are you referring to?

A My understanding was she had lost African-American population, and so the only way to sort of acquire that is to move -- she would have to move further east to make that happen.

Q When you were talking about making her numbers work, you were referring to the black population numbers?

A Yes.

Q And you mentioned the other concern that you had was about the Chesterfield area here.

A Yes.

Q This area around here?

A Yes.

Q What was your concern about this addition to your district?

[105] A Well, I raised the question just informal, well, discussion with one of the other delegates about how -- the reason for such wide expansion of that particular area.

Q Do you know what district those areas were in previously?

A They would -- no, I don't.

JUDGE PAYNE: Are you going to relate this to the redistricting process, because just casual conversations with somebody don't seem to be something that we need to be concerned with.

MS. KHANNA: Yes, Your Honor.

JUDGE PAYNE: Had a conversation with Jones or with McClellan and somehow her views were related because McClellan was her agent for communication, that's one thing, but a chat with Joe Smith doesn't do much. You haven't yet connected it. If you can, go ahead. If you don't, let's move on.

MS. KHANNA: Understood, Your Honor.

Q Delegate McQuinn, are you aware as to why those portions of the -- of your district were added to District 70?

A No.

Q Are you aware of what the racial composition is of any of the VTDs located in that Chesterfield area added to your district?

A Are you asking at the time or now?

Q At the time, were you aware?

A No.

[106] Q Are you aware now?

A It's a mix composition.

Q Did you have any other concerns about the configuration of your district?

A No.

Q Did you ever have any discussions with then-Delegate Dance specifically about the configuration of District 70?

A No, I did not.

Q Did you have any conversations with then-Delegate Dance about any other districts?

A I had some concerns about one of the other colleague's districts --

JUDGE PAYNE: Excuse me, Ms. McQuinn, but the question was did you have discussions about it and not whether you had concerns. Do you want to ask the question again.

MS. KHANNA: Sure.

Q The question was, did you have any conversations with then-Delegate Dance about any other of the challenged districts?

A Yes.

Q Which district was that?

A 75.

Q What did you discuss with Delegate Dance about your concerns with 75?

A Just the prison population that was included in a [107] particular district and a nonvoting population.

Q Did you ever talk with Delegate Spruill during the course of the redistricting process?

A I don't recall.

Q Did you have any conversations with him about the configuration of District 70?

A No.

Q Or any other districts?

A No.

Q You mentioned just now that you had a discussion about Delegate Tyler's district. What district number was that?

A 75, I think.

Q And are you familiar with that district, with Delegate Tyler's district?

A Somewhat.

Q Do you consider your district to be different than Delegate Tyler's district in any way?

A Yes.

Q In what way?

A Delegate Tyler's district is much more rural, a more rural area than mine. Mine is more urban and suburban.

Q Did you ever tell anyone that a 55 percent black voting-age population would be needed in your district?

A No.

Q Did you ever tell anyone that a 55 percent black [108] voting-age population would be needed in any House of Delegates district?

A No.

Q How did you vote on House Bill 5005?

A I voted for it.

Q Why?

A You learn to choose your battles, and I didn't have much of a say-so, so I moved forward to represent the people that had been handed me.

MS. KHANNA: Thank you delegate McQuinn, I have no further questions.

CROSS-EXAMINATION

BY MS. McKNIGHT:

Q Good morning, Delegate McQuinn. It's nice to see you again.

A Good morning.

Q I'll try to be brief.

A Okay.

Q I understood from your testimony earlier today that the only meeting you recall with Delegate Jones regarding redistricting was a meeting with you, Senator McClellan, and Betsy Carr; is that right?

A Yes.

Q And I understood from deposition testimony that you gave [109] that in that meeting, Jones sought input as to the Richmond -- pardon me. Delegate Jones sought your input as to the districts in Richmond; is that fair?

A No -- no.

Q Do I understand correctly from your deposition testimony that Delegate Jones suggested that between you, then-Delegate McClellan, and Betsy Carr, that you could discuss the Richmond issues, the districting in Richmond and work it out amongst yourselves?

A Yes.

Q Now, were you here for the testimony that Senator McClellan gave earlier today?

A Yes, for part of it.

Q Did you hear her describe a similar meeting in that testimony?

A I don't think so.

Q Is it possible there were two different meetings comprised of the same four people, is it?

A Beg your pardon?

Q Did you have just one meeting with Delegate Jones with the three of you?

A I only recall one meeting occurring with Delegate Jones, myself, and -- Delegate Jones, Carr, McClellan, and myself, yes.

Q And, now, you don't recall bringing any concerns regarding [110] redistricting directly to Jones; is that right?

A No.

Q And you don't recall making any requests to Delegate Jones about your district; is that right?

A No.

Q Did you ever tell Delegate Jones that a 55 percent BVAP level was not necessary in HD 70 for it to be a performing majority/minority district?

A No.

Q Were you aware of any analysis of HD 70 showing that there was not racial polarized voting?

A Could you restate the question?

Q Sure. At the time of redrawing HD 70, were you aware of any analysis that showed that HD 70 did not have racial polarized voting?

A No.

Q Now, Delegate McQuinn, you wrote a letter to your constituents in the fall of 2011 that said, quote, at the last redistricting session, a fair and equitable

redistricting plan was adopted for the House and the Senate; isn't that right?

A Yes.

Q And you voted for the plan; isn't that right?

A Yes.

MS. McKNIGHT: Thank you very much for your time.

THE WITNESS: Thank you.

[111] MS. KHANNA: No redirect, Your Honor.

JUDGE PAYNE: Can she be excused permanently?

MS. KHANNA: She can.

JUDGE PAYNE: Ms. McKnight?

MS. McKNIGHT: Yes, she may, Your Honor.

JUDGE PAYNE: Thank you very much for being with us, Delegate McQuinn, and giving your testimony. You may be excused.

THE WITNESS: Thank you, sir.

JUDGE PAYNE: Your next witness.

MS. BRANCH: Plaintiff calls Senator Rosalyn Dance.

ROSALYN R. DANCE,

a witness, called at the instance of the plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. BRANCH:

Q Good afternoon, Senator Dance.

A Good afternoon.

Q Can you please state your name for the record.

A Rosalyn R. Dance.

Q And could you spell your last name, please.

A D-a-n-c-e. D as in David.

Q Were you a member of the House of Delegates during the 2011 redistricting?

[112] A Yes.

Q What district did you represent?

A The 63rd District.

Q What role did you play in the 2011 redistricting?

A As a member of Privileges and Elections, I was one of the two Democrats appointed to the six-member group that worked on redistricting.

Q And you referenced a six-member group. Was that the redistricting subcommittee?

A Yes.

Q What was your primary task as a member of that subcommittee?

A Being a member, I represented the Democratic side and the 12 minority districts that were a part of it that was to make sure that we met -- everybody had to meet the equality standard, the one -- the plus or minus one deviation as far as getting that close to the actual number which was 80,000, I think, at that time and that we had to make sure that we met the Voter Rights Act as it related to the minorities having a right to vote, and from our chair, Delegate Jones, if we had 55 percent, that would meet the Department of Justice's requirement.

Q Senator Dance, do you remember testifying at the last trial in this case?

A I know that I testified.

[113] Q And you testified at the last trial about needing to make sure that Delegate Tyler's district achieved a 55-percent black voting-age population? Do you remember that?

A Yes.

Q Does your former House district border Delegate Tyler's district?

A Yes.

Q Were any changes made to your former House district in order to maintain 55 percent in Delegate Tyler's district?

A Yes.

Q What were those changes?

A Prior to the redistricting plan, my district encompassed all of Dinwiddie County. With the new plan, it would require me to give up a sizable amount of Dinwiddie County to allow Delegate Tyler to get -- to attempt to get to her 55 percent.

Q Senator Dance, let me direct your attention to Defendant-Intervenor's Exhibit 94, page one. Have you seen this map before?

A Yes.

Q And do you understand how to read it?

A I'm not the best, but, yes, and I can't see too good. I'll try my glasses first, and then I might need the big book.

JUDGE PAYNE: Let me save the time. We'll give you the big book.

THE WITNESS: Thank you.

[114] Q While you are getting the big book, I'll quickly review how this map is read. The white crosshatched areas are areas that were in your district prior to redistricting and were removed after. Yellow crosshatched was in your district prior to redistricting and remained in your district after. Then the bright yellow with no crosshatching represents areas that were added to your district that were not in your district prior to the redistricting.

JUDGE PAYNE: Do you understand that to be the case, ma'am?

THE WITNESS: Yes.

Q Senator Dance, which voters were moved out of your district as a result of redistricting?

A I lost -- so my Dinwiddie voters.

Q I'm going to make a mark on the screen. Is that Dinwiddie County?

A Dinwiddie County.

Q Where I drew that red line on the screen?

A Yes.

Q Did you want to give up part of Dinwiddie County to Delegate Tyler?

A No.

Q Why not?

A That was one of my strongest districts, and I had all of it, and I wanted to keep all of it.

[115] Q What was your understanding as to why it was moved to her district?

A Delegate Tyler's district bordered up against the North Carolina border, and there were not enough African Americans to get her her 55 percent. So she had to come north, and to do that she would have to take more of Dinwiddie County to help her get her numbers.

Q I'd like to direct your attention to the New Hope precinct. I'm going to put a couple dots here. Do you see that?

A Yes.

Q Did you ask Delegate Jones to keep the New Hope precinct in your district?

A I think -- I know I specifically did not ask -- I guess the answer is no, but can I clarify?

Q Please clarify.

A I wanted to keep one particular -- and it's one particular constituent that was in that area, I thought might be in that area, so I wanted to make sure, but he's already in that area. He was already in that area.

Q And that area was kept in your district; is that right?

A Yes, uh-huh.

Q I want to shift gears to talk about the voters who were moved into your district. Where did the voters who were moved into your district live?

[116] A I picked up Prince George County and parts of the city of Hopewell.

Q Why were voters in Prince George moved into your district?

A Because I had to give up a lot of my African-American voters in Dinwiddie County. To pick them up, I had to travel -- I was willing to travel to Prince George and Hopewell to get those numbers.

Q Was Hopewell also added to your district to raise your black voting-age population?

A Yes.

JUDGE PAYNE: Did you pick up all of Prince George County and all of Hopewell?

THE WITNESS: No, sir. I had to pick up the number to get me to the 55 percent, minimum 55 percent to meet the standard.

Q Are the areas of Prince George that were added to your district predominantly African American?

A Yes.

Q Are the areas of Hopewell that were added to your district predominantly African American?

A Yes.

Q Based on your conversations with Delegate Jones, did you understand that your district was being extended to Hopewell to fix a river crossing in House District 74?

A No.

[117] Q And what wards of Hopewell were added to your district?

A Wards 2, 6, and parts of Ward 7.

Q Can you describe which parts of Ward 7 were added?

A I picked up the, that part that had more African Americans because, again, I was trying to make sure that I had my 55 percent plus, whatever.

Q And you can set the map aside.

JUDGE PAYNE: 55-plus whatever?

THE WITNESS: At least I had to have 55 percent to make sure that we met the standard for the Department of Justice review.

Q Did you draw maps during the redistricting process?

A I drew maps from -- yes, I drew some maps.

Q Where did you draw them?

A I drew them on my home computer using the sample we had on website to practice.

Q And did you ever draw any maps of your district that were below 55 percent black voting-age population?

A No.

Q Why not?

A I had to have 55 percent to qualify, so I designed them in different configurations always looking for the 55 percent.

Q And I'd like to refer back to the map we were just looking at, so hopefully you still have the large book. This is Defendant-Intervenor's Exhibit 94, page one, and I'd like to [118] direct your attention -- I'm going to clear the screen -- to this area here, this hook drawn around the New Hope precinct. Do you see that area?

A Yes.

Q Delegate Jones has testified that he drew that hook around New Hope at your request to draw out a potential primary challenger. Did you have a potential primary challenger who lived there?

A No.

Q Did you tell Delegate Jones that you did?

A No.

Q Did you have a primary opponent in the 2011 election?

A No.

Q Did you have one in 2013?

A Yes.

Q And did she live in that hook around New Hope?

A No.

Q Where did she live?

A She lived in Petersburg.

Q Can you show where Petersburg is on the map, just put a dot --

A If I put my dot on this --

Q I'll do it and ask you if --

A Okay. I'm here. I think she's in Petersburg, so somewhere in here.

[119] Q Thank you. Senator Dance, did you make statements on the House floor about redistricting?

A Yes, I did.

Q And what were your House floor statements about?

A It was about the Delegate Jones' bill that we were looking at passage.

Q Was that House Bill 5005 and 5001?

A Yes.

Q Did you talk about needing a black voting-age population in the majority black districts?

A I did. I was speaking to justify why there should be support for that particular bill.

JUDGE PAYNE: Ms. Branch, if it's in an exhibit and she's already said it, it's there, and we don't need to expound on it. It's there -- that's exactly what the Supreme Court told us not to do, is to be adding to the record in the fashion about why somebody did something back in 2011. So let's keep it to what's relevant.

MS. BRANCH: Thank you, Your Honor.

Q What was your understanding as to where the 55 percent black voting-age population threshold came from?

A It came from our chair as far as instructions, guidance, that this is what we must have, 55 percent with a plus one deviate -- plus or minus one deviation to ensure for the 12 minority districts that we had met the standard for the [120] Department of Justice, and I thought firmly that this plan did that.

Q Did you come up with the 55 percent black voting-age population?

JUDGE PAYNE: Ms. Branch, what difference does it make -- it's already been held in this case that it was applied across the board, and I thought you all were in agreement you weren't going to be relitigating all that. I understand some context is necessary for the questions, and we've tried to give you leeway for that,

but you all are now really trying to retry a case that you've already -- the Supreme Court has already accepted the point. Can you go on with other things --

MS. BRANCH: Yes, Your Honor, and I just specifically wanted to focus on her statements that she made on the House floor about 55 percent and why she made those statements. She has a specific explanation, I believe, that she will testify to. If I can just explore that briefly and then I'll move on.

JUDGE PAYNE: For what they're worth. I think the Supreme Court told us you don't go back and redo the record like that. You don't paint things over again. There being no objection, I'm not going to keep it out.

Q Are you a team player, Senator Dance?

A Yes, I am.

Q Did that affect how you approached the redistricting process?

[121] A When I stood to speak for the redistricting plan, I was one of six members, and, therefore, I was one of the team that presented this document even though it was a chair presenting it, and when I say "I," I'm saying I as one of the six members, and I speak for the six. This is what we have, and to the best of my ability, my knowledge at the time, this was the best plan we had, and I was a team player, I was supporting it as I did budget. As a member of the budget, I was a team player when we came to the floor.

Q Apart from what Delegate Jones told you, did you personally feel that a 55 percent black voting-age population was needed in the black districts?

A This was my first time doing redistricting. I trust that he had done this before. He was our chair.

He normally came with information, and he was decisive, and I accepted that 55 percent was a requirement to get the job done.

Q Did you get electoral support from white voters when you ran in House District 63?

A Yes, I did.

Q How do you know that?

A Alvin Blaha was one of them.

Q Who is he?

A Alvin Blaha was a constituent of Dinwiddie County. He has since become deceased.

Q Did he live in the New Hope precinct that we discussed [122] earlier?

A Yes.

Q Did you specifically ask he be retained in your district?

A Yes.

MS. BRANCH: No further questions. Thank you.

CROSS-EXAMINATION

BY MS. McKNIGHT:

Q Good afternoon.

A Good afternoon.

Q Oh behalf of defendant-intervenors, I'll ask you a few questions today.

A Okay.

Q At your deposition and in testimony you've given just now, you've described a request you made to Delegate Jones to include a gentleman named Alvin Blaha in your district; correct?

A Yes.

Q And Mr. Blaha was special to you; right?

A Yes.

Q And you knew that this request would, quote unquote, stretch your district; is that right?

A I don't understand stretch. My district -- I understood that when he did the configurations, that as he so drew them, because I didn't really do my last configurations, he made the [123] recommended drawings, he said if I was willing to go to Prince George and Hopewell, then he could work things out. I was assuming for Delegate Tyler. Is that what you are asking me?

Q I'm asking you, I understood from your deposition testimony that you used the word "stretch," but I understand what you mean, that the -- and correct me if I'm wrong, that by making this request it would move your district in a different way, it would pull it in a different way, but you wanted Alvin Blaha in your district regardless of that; is that right?

A I'm not sure I understand what you are saying.

Q Okay. Do you remember testifying in deposition this August for this matter?

A This August, yes, uh-huh.

Q And in that deposition testimony, deposition, do you recall providing testimony about this request regarding Mr. Blaha?

A I did have -- I did answer questions in regard to this request.

JUDGE PAYNE: I think the question was, do you remember that.

THE WITNESS: No, but if you --

JUDGE PAYNE: Do you want to show it to her and refresh her recollection then.

THE WITNESS: Thank you.

MS. McKNIGHT: Could we put on page 31 of her [124] deposition transcript from this August, 2017, please.

THE WITNESS: You had it a little bit bigger. Could it go back to that size?

Q Please feel free to review for context, and then I'll direct you to the line regarding how it would shape your district.

JUDGE PAYNE: Do you want her to read the whole page or just down to line 14?

MS. McKNIGHT: If you could scroll down so you can see the bottom half of the page.

JUDGE PAYNE: Give her time to read. It's hard to read when it's going too fast. Tell them when you want them to move the screen.

THE WITNESS: Would you go back? There's a question, my question is do you know why it went here. Could you tell me what it is --

JUDGE PAYNE: Just read it to yourself. Read on down to line 15, and then they'll move the page to the rest of the page. That way you won't have to be trying to follow it while it's moving. That's hard.

THE WITNESS: Okay.

JUDGE PAYNE: Move it on down.

THE WITNESS: Thank you.

Q And directing you to lines, roughly lines 18 to 20, does that refresh your recollection about the request you made for [125] Alvin Blaha and the effect it would have on the shape of your district?

A I think I would like you to go to line 13 where it says -- I remember saying this: It's not good being on this committee because you end up with whatever is left over. Everybody else decides what they want, but I want to keep my one constituent. His name was Alvin Blaha.

Q Thank you.

JUDGE PAYNE: Then it continues, and I want --

THE WITNESS: -- "to keep him. So to keep my Alvin Blaha, I had to go to Hopewell. They said they might have to stretch me or whatever to pick up that area."

JUDGE PAYNE: Why did you want to keep Alvin Blaha? You may have said, but I didn't follow.

THE WITNESS: It was -- really, he was my friend that was dying, and I just wanted to be there for him and his family as I was at the end, but it was just that thing of I was the last one to decide, so I didn't really pick my district.

Because I was on the committee I was a team player, I took whatever would be left for me after we took care of Delegate Tyler, because I wanted her to be satisfied. But as they stretched me in whatever direction they were to take me, I ask one thing in that I get to keep that one gentleman in my district.

JUDGE ALLEN: It sounds like you had no choice. Did [126] you have a choice?

THE WITNESS: I had no choice about having to give up Dinwiddie County because -- I thought I did because my colleague, Delegate Tyler, had to have 55 percent, and she was very unhappy about the fact that it was very, very difficult to get her there. And so to give her that -- and that was my statement. I'm on this committee, and it's not a very good thing because I get what's left over, but I accepted that because I was a team player, but I asked for one thing, that I could keep this one constituent in my district. No matter how they shaped me, let me keep that one constituent.

MS. McKNIGHT: Thank you.

Q According to your deposition testimony, you understood that this movement would take your district into a populus that would not, quote, give you African Americans, end quote. Does that ring a bell?

A No.

Q Would it refresh your recollection to see the deposition transcript?

A Yes, please.

Q Turn to page 32. Take your time reviewing the page, and then I'll ask you a specific question about a line.

A I'm sorry, did you say line 32?

Q Page 32, if you could review it at least through line 13.

A Okay. Okay.

[127] Q So you understood that the request for Alvin Blaha would take your district into a populus that would not give you African Americans; am I quoting that correctly from your transcript?

A My concern was that I had to have --

JUDGE PAYNE: Excuse me, Senator. The answer to that question is yes or no. If you need to explain, you can ask for it or the lawyer who called you will give you an opportunity to -- ask it again.

Q So, you understood that this request for adding Alvin Blaha to your district would take your district into a populus that was not giving you African Americans; isn't that right?

A Yes.

Q Alvin Blaha lived on Squirrel Level Road; is that right?

A Yes.

Q And Delegate Jones granted your request; right?

A Actually, he was in my district. I got to keep him, yes.

Q Do you recall testifying at your deposition for this case in 2015 about Delegate McClellan?

A Please refresh my memory.

Q Sure. During that deposition, you discussed the fact that then Delegate McClellan was a, quote unquote, unique candidate. Does that ring a bell?

A No. Please refresh my memory.

JUDGE PAYNE: Let her see the deposition, I think, is [128] what she's asking for; is that right, Senator?

THE WITNESS: Yes.

JUDGE PAYNE: What page do you want to put up?

MS. McKNIGHT: Could you hold on one moment, Your Honor? Pardon me. Pardon me, Your Honors, thank you. I'm trying to keep this as focused as possible.

Q Let me paraphrase my question if you can bear with me. At the time of your deposition in 2015, do you recall testifying that then -- that Delegate McClellan, at the time, was an exceptional person and that she had high publicity as a candidate?

A No, I don't remember that, but if you can show me.

Q Okay. Could you turn to page 188, of May 21, 2015, deposition.

A A little larger, please. Okay, thanks.

Q If you could scroll down to -- I'm looking at lines 15 through 18.

MS. BRANCH: Objection, Your Honor.

THE WITNESS: Could I read this in context of what was before us --

JUDGE PAYNE: Read the whole page if you want to, to yourself. Then there'll be a question but there's an objection.

THE WITNESS: They have to scroll it down.

MS. BRANCH: Objection is to read both the question [129] and the answer.

JUDGE PAYNE: Let's remember that the correct procedure is to ask, in this instance, did you think in such-and-such year that Delegate McClellan was exceptional or whatever, and she says, yes, THEN there's no impeachment. If she says no, then you say, do you remember testifying at your deposition to the

contrary. You don't say it. You say whatever it is the answer is. That's the way to do -- then we don't ever have objections or we don't ever have impeachment. So start with the question that you want and that is, is that right -- when was this, in 2011?

MS. McKNIGHT: 2015.

JUDGE PAYNE: In 2015, did you say that you thought Delegate McClellan was a unique person, exceptional person, or words to that effect.

THE WITNESS: I defined her. I described her, and that was the end product of describing who she was, and I think that that determines my response, because --

JUDGE PAYNE: Is the answer to that question yes --

THE WITNESS: In the context of having defined who she was as from young adulthood and what she had done as a child, her role and how she was received by others because of her -- the sum total of who she was as a person.

Q And you were describing her in this way in the context of other candidates that might follow her in HD 71; isn't that [130] right?

A They would not meet her -- be the same as Jennifer McClellan running for that position.

Q And that they would not have as much exposure as she had; is that right?

A Did I put that there?

JUDGE PAYNE: She's asking you the question. That's all.

THE WITNESS: What I said is what I stand by.

Q So do you stand by the fact that the -- the statement that the average person will not have that much exposure when they go forward?

A In the context of the way I made that statement, that was a part of that statement.

Q Then you don't believe that 55 -- you don't know whether 52 percent BVAP would be enough for someone who is not Delegate McClellan to get elected in HD 71; isn't that right?

A I do not know.

Q You believed that 55 percent for Jennifer McClellan was exceptional, that she could do it with 50 percent; is that right?

A Did I say that?

JUDGE PAYNE: She's asking you --

THE WITNESS: I'm sorry. You're asking me that today.

[131] Q Yes.

A Is that a question?

Q Yes.

A I do not know.

JUDGE PAYNE: Take the deposition down right now. It's distracting the witness from -- because it's confusing her what she's being asked.

Q You believed that anyone coming after Jennifer McClellan, 55 percent, clear the bar, was a good number?

A I accepted that the chair who was experienced, had done this before said --

JUDGE PAYNE: Senator Dance, there's a question on the floor. If you don't understand it, say you don't understand it.

THE WITNESS: I don't understand it.

JUDGE PAYNE: That question is easily answered yes or no, and then if you need to augment it, the lawyer on your side can ask that. Ask the question again, please.

Q You believed at the time of your deposition in 2015 that anyone coming after Jennifer McClellan, 55 percent, clear the bar, was a good number?

A Yes.

Q And you believed in 2015 that you -- that the 55 percent number sounded sound, and you worked with it; isn't that right?

A That number was given to me by the chair, and I accepted [132] it.

JUDGE PAYNE: Excuse me, Senator Dance. Ask the question again, and answer it yes or no, and if you need to explain it -- please stay with that approach, if you would, Ms. McKnight.

Q You believed in 2015 that the 55 percent BVAP number sounded sound; isn't that right?

A Yes.

Q And you believed in 2015 that 55 percent for Jennifer McClellan was exceptional, she could do it with 50 percent; isn't that right?

MS. BRANCH: Objection. Asked and answered.

A No.

JUDGE PAYNE: It wasn't answered. It was asked. And her answer this time was no. Did I hear you correctly?

THE WITNESS: No.

JUDGE PAYNE: You felt like she couldn't do it with 50 percent; is that what you are saying?

THE WITNESS: I didn't give a specific number. I don't know what that number might be.

JUDGE PAYNE: Go ahead, Ms. McKnight.

Q Do you recall testifying in this matter in May 2015 in a deposition?

JUDGE PAYNE: She already said, I think, she remembers the deposition. We got that. What's the next part?

[133] Q Would it refresh your recollection to see a portion of the deposition about whether -- what your belief was in 2015 about the 55 percent figure and Delegate McClellan?

A If I hear I said 50 percent --

JUDGE PAYNE: I think her question was would it help --

THE WITNESS: Yes.

JUDGE PAYNE: Put it up there for her, if you would, please, and point her to the question and answer. Do you need some water?

THE WITNESS: Yes, please.

JUDGE PAYNE: You've been testifying awhile. Maybe you need some.

Q Take your time reviewing. The question begins on line five, and your answer concludes on line 14.

A I said that, and, yes.

Q So just to make a clear record, the question was, "Given a situation like Delegate McClellan's district, did you think 55 percent was a reasonable number for a district like hers?"

And your answer was, "55 percent for Jennifer McClellan was exceptional. She could do it with 50 percent, but anybody coming after her, 55 percent, clear the bar, was a good number. And I'm speaking about people that have been there before. They've done this process before. If they think it's a good number, it's a great number." Is that accurate?

[134] A Yes. What's important, I think, is I'm speaking about people that have been there before, they've done this process. If they think it's a good number, it's a great number, and, again, I was referring to Delegate Jones. I trusted that he had a good number, and I stand by this.

Q And you testified in 2015 that your belief was that those who had experience on redistricting, their integrity, their honesty was intact, their ethics were intact. Did that include Delegate Jones?

A Yes.

Q Senator Dance, did you ever tell Delegate Jones that your district did not need 55 percent BVAP in order to be a performing majority-minority district?

A No, I do not remember such a conversation.

Q Were you aware of any analysis showing that in your district, HD 63, there was no polarized voting?

A No.

MS. McKNIGHT: Your Honors, I'd like to conclude with a demonstrative. This is a video that was admitted in the 2015 trial as an exhibit, but it was not played.

MS. BRANCH: Objection, Your Honor. I believe that defendant-intervenors are going to show a video of --

JUDGE PAYNE: It might be helpful for you to get up where I can hear you a little bit better. Sorry. Don't you have mikes on those tables?

[135] MS. BRANCH: Apologies. I believe defendant-intervenors are going to show a video of some of Senator Dance's statements that she made on the House floor. The video is in the record, both the video itself and a transcript of what she said on the video. Those videos were played at the last trial. They are cumulative testimony and, respectfully, a waste of time. We have a finite time in which to try this trial, and --

JUDGE PAYNE: Your objection is duplication of testimony.

MS. BRANCH: Yes, not necessary.

JUDGE PAYNE: Okay. Why do you need to play that again for Delegate Jones?

MS. McKNIGHT: It's not exactly true that this has been played. This video has not been played before.

JUDGE PAYNE: Let's assume that. The transcript is in the record, she said, and you don't quarrel with that. We can read it. Why is it important to you to play it in the presence of the witness?

MS. McKNIGHT: We would like to understand whether the testimony -- if her beliefs are accurate, if it accurately captures what she believed at the time. It contradicts some of what plaintiffs are asserting in this case, and we think it's important to show the demonstrative of the video. It is only three minutes long. [136] The judges are welcome to assess the credibility of the video, and Senator Dance is here now to answer any questions about it. They also have opportunity on redirect to question her about it.

JUDGE PAYNE: Overruled. But it does open up the door to what Ms. Branch was attempting to do and I asked her not to do, so she can follow that up on redirect examination. All right, play it, please.

MS. McKNIGHT: Your Honor, one more point so the record is clear. I understand you overruled the objection. We believe the Supreme Court is interested in justifications that are not post hoc, meaning the Supreme Court is interested in seeing the record at the time, and we believe this is the best way to show the Court what that record is.

JUDGE PAYNE: Judge Merhige asked me one time was I trying to snatch defeat from the jaws of victory.

MS. McKNIGHT: I understand, Your Honor. This is Plaintiff's Exhibit 34.

(Video played.)

Q Senator Dance, that was you speaking; correct?

A Yes.

Q And the clip is an accurate recording of what you said; is that right?

[137] A On that day, yes.

Q And you didn't say anything that was untrue; correct?

A No.

MS. McKNIGHT: Thank you. No further questions.

JUDGE PAYNE: Any redirect?

MS. BRANCH: Yes, Your Honor.

REDIRECT EXAMINATION

BY MS. BRANCH:

Q Senator Dance, defendant-intervenors just played a video of you on the House floor; right?

A Yes.

Q And there you talked about needing a 55 percent black voting-age population?

A Yes.

Q Why?

A I was indoctrinated at that time to the 55 percent, those criteria that we had to have to get this done, and that criteria had been followed, and then I wanted -- then I was in my team mode of explaining enough, providing enough information to ensure my colleagues understood what we had gone through, they had opportunities to give input and learn, make changes before the final vote, and this is what we would be presenting.

Q Did you see it as part of your role as a member of the six-person subcommittee on redistricting to sell the [139] redistricting plan to members of your caucus?

A Yes, I did, because I was told that when we locked into this, the Department of Justice would have to be interviewed, everything. Since this is a document, this is our document, the six of us, this is what we take, and this is what we present to the General Assembly and fight it in the Department of Justice. Those are a solid ground to work with.

Q What made you think that 55 percent, clear the bar, was a good number?

A I worked with the software. It's intimidating at first. Took me a couple weeks before I was brave enough to get into the war room, as I called it, to actually move and see exactly how proficient the information was, how it dealt with just -- not just the age of the person but it dealt with those of the voting age.

It could tell you in a little small segment that here's what you are. I knew that I was of the minority party. I was assured from this 55 percent that the 12 positions were there, and then it expanded to other Democrats for those areas, and it was political. It was a point of what could you get from this.

As far as those 12 areas, they were set. I thought that 55 percent, they were going to pass the Department of Justice, they'd had a chance to talk with the chair who had the full map, he had his own software in his office, and that he listened, and this is what we were going to have and this is [139] the best deal we were going to get, because we had had a chance to at least share. Whether we got what we wanted or not, we at least had an opportunity to share.

Q Who was the first person who ever mentioned 55 percent black voting-age population to you?

A Our chair of that subcommittee, and that was Delegate Jones.

Q Did you ever do any analysis to show that 55 percent black voting-age population was needed in any of the black districts?

A I accepted 55 percent as gospel.

Q Did Delegate Jones ever show you any analysis that 55 percent was needed?

A No, I accepted it as gospel.

Q Did he show you any expert reports?

A No.

JUDGE PAYNE: I think she accepted it as the gospel.

MS. BRANCH: Understood. Thank you, Your Honor.

Q And you testified earlier about Alvin Blaha who lived in your district, and he lived in the New Hope precinct; is that right?

A Yes.

Q Could the map drawers have split the New Hope precinct to include Mr. Blaha's home in your district without including the entire precinct?

A Sure, yes.

[140] Q Finally, I'd like to pull up -- direct your attention to Plaintiffs' Exhibit 33, page 43, and this is a transcript of your House floor statement from April 4th, 2011. This is actually part of the video that was just shown, but I'm just going to focus --

A Can you make it larger, please.

Q -- on three lines of this. Starting on line 21, you said, "In order to maintain those 12 districts, it required some movement and sometimes" -- this falls on to the next page -- "not perfect adjustments between precincts. There might have been some split areas." Do you see that?

A Yes.

Q And when you are referencing split areas, would Ward 7 in your district be one of those?

A Yes.

Q And Ward 7, why was that split?

A Because I had to pick up some African Americans, so I got -- I didn't get enough, so the two wards that they gave me in Hopewell wasn't enough, so I had to get out of seven.

Q Who was Ward 7 split with?

A Delegate Riley Ingram.

Q Is he a Republican?

A Yes.

Q Is he white?

A Yes.

[141] Q And which part of Ward 7 was he given?

A Predominantly Euro-American or white segment.

MS. BRANCH: No further questions. Thank you.

JUDGE PAYNE: Can she be excused permanently?

MS. BRANCH: We'll reserve the right to call her during our rebuttal case.

JUDGE PAYNE: You might need to be called back, Senator Dance, so you need to be available. Do you agree to come back when you're called, to make yourself available at their call?

THE WITNESS: I do.

JUDGE PAYNE: Please don't discuss your testimony with anybody but the lawyers in the case.

THE WITNESS: Thank you, sir.

JUDGE PAYNE: All right. Next witness.

MR. HAMILTON: At this point, Your Honors, we call Dr. Jonathan Rodden.

JONATHAN A. RODDEN,

a witness, called at the instance of the plaintiffs, having been first duly sworn, testified as follows:

MR. HAMILTON: Your Honor, I would point out, there was one delegate witness, Ward Armstrong, who we have decided, in the interests of efficient presentation of testimony, not to [142] call, and the intervenors have released him from his subpoena. So we're running on schedule.

DIRECT EXAMINATION

BY MR. HAMILTON:

Q Good morning, Dr. Rodden. Can you please state your full name for the record.

A Jonathan Andrew Rodden, R-o-d-d-e-n.

Q And, thank you. You are an expert for the plaintiffs in this case; is that right?

A Yes.

Q And you've prepared a couple of reports and are here this morning to testify about them; is that right?

A Yes.

Q The Court has already had an opportunity to review those reports, but let me ask you briefly a couple of questions about your expertise and the focus of your scholarly work. Where are you employed, Dr. Rodden?

A I'm professor of political science at Stanford University and a senior fellow in the Hoover Institution at Stanford.

Q What is the Hoover Institution?

A It's a research-oriented group of scholars in economics, political science, and some in history, also some individuals who served in government in the past.

Q And, Dr. Rodden, what is the Stanford Spacial Social [143] Science Lab?

A This is a group of scholars and graduate students that I have assembled a few years ago and put together some equipment and some data, and we've been working together on a number of projects using geo-spatial data from around the world to assess a variety of topics across the social sciences but focusing in particular on economic -- on elections and voting behavior, in particular in the United States.

Q So can you describe a little bit about -- just briefly about the political and voting data that you use and how you use it in the Spacial Social Science Lab?

A Yes. We've been collecting a lot of data at the level of precincts or voting tabulation districts from around the world but especially in the United States. We put together the first complete nationwide precinct-level data set for the 2008 election, created an

online tool that other scholars can download and use those data as part of the redistricting plans.

So we've fed in a lot of data to the analysis, study of redistricting around the country, and we continue to produce precinct-level data sets for other scholars to use, and, also, we've created online visualization tools for those data. We also have assembled a lot of individual-level data using voter files from different states.

Q Your résumé is attached to your report; is that right?

A Yes.

[144] Q And could you just tell us what degrees you hold and from what institutions?

A Yes. My undergraduate degree was from University of Michigan in political science. I then received a Ph.D. from Yale University in political science. I was a Fulbright Scholar at the University of Leipzig in Germany.

Q And can you give us a brief overview of the positions you've held since you received your Ph.D. from Yale?

JUDGE PAYNE: Do you accept him as an expert -- what are you offering him in, Mr. Hamilton, what area?

MR. HAMILTON: I am offering him as an expert in the field of geo-spatial data analysis and its application to the field of redistricting pursuant to Rule 702.

JUDGE PAYNE: Geo-spatial data analysis and its role in --

MR. HAMILTON: And its application to the field of redistricting.

JUDGE PAYNE: Is he accepted as an expert in that area, or do you challenge him?

MR. BRADEN: I think we do challenge him, Your Honor.

JUDGE PAYNE: Let him finish his examination, and then you can do the voir dire. All right, Mr. Hamilton, excuse me.

MR. HAMILTON: Thank you, Your Honor.

Q So let's start with the overview of the positions you've [145] held since you received your Ph.D. from Yale.

A Yes. I took my first job as an assistant professor at the Massachusetts Institute of Technology in the political science department. I then was promoted to associate professor without tenure. I was given the title of the Ford Chair, Ford associate professor of political science. I then received tenure at MIT.

After that, I was named as a fellow at the Center for Advanced Studies in Behavioral Sciences at Stanford University. That was a year-long visiting position. During that time, I was offered a job to stay at Stanford and join the faculty as a full professor, and I've been a full professor at Stanford since then and after that joined the Hoover Institution.

Q What's the focus of your scholarly work?

A I've worked on a number of things over the years, but I've really been focusing in recent years on the analysis of geo-spatial data, in particular related to elections, political geography. I'm doing a lot of work

on representation. A lot of that work has do with the construction of districts and the representation that flows from redistricting.

Q Okay, let me stop you there. Can you explain what spatial data science is?

A This is a field that has deep roots that really goes back to the 1800s. It's a field in which we collect data that has a geo-spatial component, by which I mean we can map the data. So [146] we have something like boundaries, or we have something like X/Y coordinates for individuals, and we're able to assemble data at different levels of aggregation by the use of geography.

Q Does it have an application in the field of epidemiology, for example, tracking diseases or locating the causes of disease?

A This is really where the field begins. So it started, in fact, with a generation of a map of the cholera outbreak in 1850 in London. This is how John Snow, by drawing a map, mapping out the deaths from cholera in London was able to discover where the -- was able to discover a cluster of deaths, and that's really -- view of the first moment of the field of epidemiology.

Q So John Snow plotted the locations of deaths across a map of the city of London; is that right?

A Yes, that's right. Discovered a cluster, a clear cluster of death.

Q And then over the top of that map, what did he overlay?

A Overlaid a number of things, but upon looking at them, saw a map -- put together a map of water facilities, water pumps.

Q And what was the correlation between the deaths and the locations of the water pumps?

A Found that the deaths were quite clustered around one of the water pumps.

[147] Q As a result, what did he do? What did the city authorities do?

A They removed the handle from the pump.

Q What effect did that have on the incidence of cholera deaths in London?

A It was a sudden stop in the cholera epidemic.

Q Is that an example of the visualization of data, geo-spatial data and its application?

A Yes, and it's something similar to what we've been doing ever since then. I also work -- separately, some of my work is in epidemiology, and it's related -- I collaborate with people in the medical school and visualizing the data in space and understanding spatial processes of disease propagation and things likes that.

That's a big part of what we do in what we call spatial data science, and the work on elections and using precinct-level election data is a part of that.

Q Do you know Dr. Edward Tufte from Yale University? Are you familiar with his work?

A He was one of my professors at Yale.

Q Has he published a number of books on the visualization of quantitative information?

A Yes.

Q That's the same field?

A Yes. It's the idea that there's a lot we can learn about [148] the world by starting with the -- a map of a social phenomenon and then going from there and adding layers and trying to learn more about what's happening.

Q Now, in the field of election-related litigation or redistricting-related litigation, have you been accepted as an expert witness in other courts?

A Yes.

Q In state courts?

A Yes.

Q In federal courts?

A Yes.

Q Can you give us a couple examples.

A I worked as an expert witness in a case related to redistricting that had components of both partisan and racial gerrymandering.

Q Let me stop you there. What state?

A Yes, that was in the state of Florida, and it was related to an amendment to the Florida constitution about gerrymandering.

Q That was in state court, and you were accepted as an expert witness and you testified in that trial?

A Yes.

Q Have you testified -- been accepted as an expert witness in this field in federal court?

A Yes. I worked for the defense in a case related to the [149] Voting Rights Act and also related to

redistricting and the Ferguson-Florissant school district in the district court in Missouri.

JUDGE PAYNE: In federal court in Missouri, did you say?

THE WITNESS: Yes.

Q How about here in Virginia, have you been accepted as an expert in the Eastern District of Virginia?

A Yes. In fact, it was in this courtroom. That was in the Lee case and had to do with the voter ID.

Q Do you recall who the presiding judge was?

A That was Judge Hudson.

Q Has your work been cited or discussed in the United States Supreme Court?

A Yes. In fact, last week. I have been working, as I've been describing, doing a lot of work on geo-spatial analysis of redistricting, had written a number of papers with a colleague about how to disentangle partisan gerrymandering and the impact of geography, and, of course, in Wisconsin, this is a very important question.

I wrote a number of papers that were cited by both parties in the case, wrote a brief that was cited by the justices, several of the justices in the oral arguments last week.

MR. HAMILTON: All right. Thank you. Your Honor, we would proffer Dr. Rodden as an expert as described earlier [150] pursuant to Rule 702. He is a witness qualified as an expert by knowledge, skill, experience, and training. I believe his scientific and technical knowledge will help the trier of fact, and, of

course, the Courts understand the evidence and determine the relationship.

We have a number of maps that are already in evidence that display in just static shaded terms the relative racial composition of the various districts. Dr. Rodden will be presenting density maps which are a familiar tool and common tool in this field of expertise, and it will help illustrate the actual division of the white-from-black populations at a granular and, of course, at a macro level as well.

Ironically, those exhibits are already admitted before the Court. They're already a part of the record. They were introduced with no objection, so I find it curious that there's an objection to the testimony of the author of the reports that have already been admitted without objection. So I think the objection may have already been waived by the admission of the underlying expert reports.

JUDGE PAYNE: Mr. Braden.

VOIR DIRE EXAMINATION

BY MR. BRADEN:

Q Dr. Rodden, have you ever drafted a plan at the request of any state legislature?

[151] A To address a state legislature?

Q Have you ever drafted a plan that you provided to a state legislature?

A No.

Q Have you ever been requested by a state legislature to ever draft a plan?

A Not by a state legislature, no.

Q Have you ever drafted a complete legislative plan for Virginia?

A Yes, I believe I have.

Q You have? Have you -- did you provide a copy to the Court or to the parties?

A It was not for the House of Delegates. This is part of other work. I've drawn Congressional maps in all the states.

JUDGE PAYNE: For here?

THE WITNESS: I'm sorry?

JUDGE PAYNE: For this Court here?

THE WITNESS: Not for the Court. In my academic work, I've drawn a number of redistricting plans, but this has not been done for submission and for use in -- for implementation. This is part of my academic work on redistricting.

Q So have you ever drafted a plan that's been considered by a legislative chamber?

A No.

[152] Q Have you ever drafted a plan that's been considered by city council?

A No.

Q Have you ever drafted a plan that's ever been considered by any political body?

A No.

Q Have you ever been hired by a legislature to advise them on the redistricting process?

A No.

Q Have you ever been hired by a local jurisdiction to advise on a redistricting process?

A As part of my work in the Ferguson-Florissant school district case, there -- we generated -- my coauthor and I generated a number of potential single-member district school board plans, but those were not -- those were not implemented in that case. It's still ongoing, in fact.

Q And, in fact, you testified for the side that lost at the district court level?

A Yes.

Q Have you ever been hired as a master to draft any type of redistricting plan?

A No, I was recently asked to do that work by a federal judge, but the schedule, in part because of this case, did not work out, and so I'm not currently working on a map.

JUDGE PAYNE: So the answer is, you have not served [153] as a special master to help draw maps.

THE WITNESS: I have not.

Q Have you ever been even employed in any capacity by a state legislature?

A No.

Q Or even been an intern in a legislative chamber?

A No.

Q Ever worked for any elected officials?

A No.

Q Ever worked for any political campaign?

A No.

Q Worked for any political party?

A No.

Q Ever worked on a preclearance submission to the DOJ?

A No.

Q Ever worked for the voting rights section of the Department of Justice?

A No.

Q Have you ever been a fact witness in a redistricting case?

A No.

Q Does your report that you submitted in this case bear any resemblance to the expert reports you've submitted in other cases?

A I think so.

Q So in other cases, you speculated about the motives of the [154] legislature in drafting the plan?

A That's not how I would interpret what I've done in this report. I did not speculate about the motives of the individuals drawing the plan. I laid out for the Court what decisions were made, in parts very descriptive fashion, so that the Court could understand how the drawers of the plan went about achieving the 55 percent target that they had set out for themselves.

Q And your position is, to read your report, "This report explains the nuts and bolts of how the legislature achieved the 55 percent racial target."

A Yes.

Q So you purport to explain the nuts and bolts?

A I show visually and descriptively how the lines were moved, how VTDs were moved, what were the

implications of those moves. I demonstrate how VTDs were split and what was the implication of those splits, all of which I believe is the kind of information that the Supreme Court appeared to be asking for when calling for a holistic analysis --

Q Before writing your report, did you interview any members of the legislature?

A No.

Q Any staff members?

A No.

Q Talk to any Virginia elected officials?

[155] A No.

Q Any Virginia appointed officials?

A No.

Q Have you ever lived in Virginia?

A No.

Q Did you read any of the floor debates?

A I've -- I think I've testified before, I saw some of that when I first started the case to try to familiarize myself with it, but I have not read in detail the floor debates.

Q Did you watch any of the videos of the floor debates other than what you saw today?

A I have now, but not before.

Q Did you go to any of the hearings?

A No.

Q Did you interview anyone who testified at any of the hearings?

A No.

MR. BRADEN: Your Honor, if you look at the report that was submitted in this case, it is based upon simply him speculating on legislative desires, and he's not qualified to do that since he lacks a background in that area.

Q Have you ever written anything about the legislative process?

A As a political scientist, yes.

Q You've talked about state legislation. What publications [156] would that be in?

A Have I talked about --

Q In your publications, in your peer-reviewed articles, do you have discussions of the state legislative process?

A I'm quite sure that there are some discussions in the context of redistricting with the legislative process behind it, yes.

Q Do you purport to be an expert on legislative process in Virginia?

A No, sir.

MR. BRADEN: I think the Court should reject his testimony.

JUDGE PAYNE: What's the effect -- I'm sorry. I was making a note. Mr. Braden, what's the effect of your having not objected to his report into evidence as it pertains to his ability to testify about the report?

MR. BRADEN: That's an interesting question, Your Honor. We may have, in fact, waived it. We don't think that we necessarily waived it. We have no problems with the Court seeing the maps, but if we're being asked whether or not we believe this gentleman

is an expert, we most certainly do not. He lacks the experience to testify as to the motives and actions of the legislative --

JUDGE PAYNE: He can't testify to motives anyway. That's not his business. That's not the topic of expert [157] testimony and won't help the trier of fact, and I hope they're not going to offer that. I didn't sense from Mr. Hamilton's remarks he was, but -- anything else that you have to say?

MR. BRADEN: No, Your Honor.

JUDGE PAYNE: Anything else you have to say, Mr. Hamilton?

MR. HAMILTON: Yes, Your Honor. First of all, virtually the entire voir dire examination that we just heard, if that's a basis for excluding an expert, then most of the experts that have been admitted across the courts in all of these redistricting cases would have been rejected because they'll all academics.

Of course, they haven't been employed by legislatures, and most of them haven't drawn maps themselves. That hardly makes their testimony not helpful within the meaning of Rule 702.

Second, I simply don't understand the position that an expert could submit a report which usually, of course, is not admissible, but the testimony which usually is admissible can't be. It's exactly the reverse. I applaud intervenors for stipulating to the admission of not one but two of Dr. Rodden's reports. It helps speed along the process of this case.

We've stipulated to the admission of their reports both in 2015 and in 2017. So I think that the argument here is clever, it's a great demonstration of a technique

of trying to [158] get a little bit of the cross in in the middle of the testimony, but I think the argument should be rejected. It's been waived, and Rule 702 provides ample authority for the Court to admit it.

JUDGE PAYNE: As Judge Williams once said at a juncture similar to this in a trial, let us chew on this over lunch, and we will resume in 45 minutes.

MR. HAMILTON: Thank you.

(Luncheon recess.)

[159] JUDGE PAYNE: We've determined that the objection is overruled. The witness will be accepted as an expert in the tendered area, geo-spacial data analysis and its application to redistricting. However, I think we are all of the view that we do not need the assistance of any expert in giving us the motivations and intent of anybody.

MR. HAMILTON: Of course not, Your Honor.

JUDGE PAYNE: And I will say that I understand Mr. Brady's concern because in the report, there's a fair amount of gratuitous comment along those lines that is not particularly helpful in analyzing anything. So we'll -- if we'll keep that out, I would appreciate it. All of us will.

MR. HAMILTON: I will do my best, Your Honor.

JUDGE PAYNE: And, Dr. Rodden, you need to remember that admonition, too --

THE WITNESS: Certainly.

JUDGE PAYNE: -- and not gravitate into it. All right.

MR. HAMILTON: May I proceed, Your Honor?

JUDGE PAYNE: Please.

BY MR. HAMILTON:

Q Dr. Rodden, let me direct your attention to Plaintiffs' Exhibit Number 69. It's in the binders in [160] front of you. Is this a copy of your initial report?

A Yes.

Q And Exhibit 70, is that a copy of a reply report?

A Yes.

Q Now, do you have working copies of those two exhibits in front of you?

A Yes.

Q Is that identical to the admitted trial exhibits?

A Yes.

Q Is it easier to work with the smaller notebook?

A Yes.

Q Okay. Now, do you also have Table 4 from Dr. Ansolabehere's expert report in this matter, which is Plaintiffs' Exhibit 50, page 72? And what is that?

A This is simply a table of population and racial composition of the challenged districts and --

Q Is it helpful to have that with you as you testify here today?

A Yes.

Q Okay. Let's look at your initial report first. Can you explain what you were asked to do?

A Yes. I was simply asked to assess whether race was the predominant factor in drawing the 12 current

districts that are being challenged for the Virginia House of Delegates.

[161] Q And how did you approach that question?

A Well, I collected and used all the available geospacial data to provide an analysis of the construction of those districts. For each of the regions that contain the 12 districts at hand, I examined whether it was plausible that we would see the final shape of those districts without extensive use of race being used as the dominant consideration in drawing the districts.

Q And what was your conclusion after looking at these 12 districts, sir?

A That race was the predominant factor in drawing those districts.

Q All right. Before we walk through how you reached that conclusion, Dr. Rodden, let me ask you right from the beginning, was any part of your analysis an examination of whether this plan was drawn with racially discriminatory intent?

A No. That's not part of my analysis.

Q Okay. You were only looking at whether race was the predominant factor in the drawing of the map; is that right?

A Correct.

Q Okay. So let's move to the substance of your analysis. There are 11 House districts at issue in this litigation. Did you approach your study of these [162] districts in a -- on a regional basis?

A Yes. I divided the study into two regions, the first of which was Richmond but also extending to the tri-city area, because all those districts touch one

another and, as I try to describe in the report, every move that's made in one has an effect on the other. So I take that region as a whole --

Q Okay. And is there a second region that you examined as well?

A Yes. And then the Tidewater region I also treat as a separate analysis.

Q Did you consider the implications of the use of an expressed racial target of 55 percent black voting age population?

A Yes. In some respects, that was the start point for my analysis. That had already been determined, and the first thing I was doing in my analysis is trying to understand the implications of using that target.

Q Is it your opinion that every districting decision had to be done exactly the way it was done in order to achieve that 55 percent goal?

A No. Of course not.

Q There are alternatives?

A Yes. And what I try to describe in the report is that there are -- there are parts of the -- of these [163] regions where, in fact, the 55 percent target was very constraining, and it really was quite difficult to reach the target, and there are others where it was somewhat less so.

But in most instances, yes, there are other ways to get there, and my job was to describe how the VTDs and blocked were moved in order to get there.

Q So let's look first --

JUDGE PAYNE: In order to get where?

THE WITNESS: To get to the 55 percent target.

BY MR. HAMILTON:

Q Let's look first at the Richmond and tri-city area. I believe the discussion begins on page 9 of your report; is that right?

A Yes.

Q Okay. And what House districts are in this area?

A Seventy-one, 69, 70, 74 and 63.

Q So let me direct your attention to page 10 of your report, Figure 1, and I think we can put it here on the screen. What is this map? Can you describe what it is and how it's used?

A Yes. This is a dot density map, and it's something that I use extensively in my reports. This is one that zooms out to the entire Richmond and tri-city area. And what I'm doing in creating this map is taking census data [164] at the level of census blocks and creating dots that capture individuals from the census data; in this case, voting age individuals. And I'm representing the race of those individuals with the color of the dot.

And in this particular map, one dot captures ten individuals. And we'll see some maps later in the report in which I zoom in further and one dot might capture five individuals, or if we zoom in very, very fine grained analysis, we'll see one dot corresponding to one individual.

And I want to clarify that these are not based on individual level data. So we don't know the addresses of the individuals. We know the blocks, and the blocks are very small, maybe something like a hundred people.

Q This is a census block?

A Yes.

Q And each voting tabulation district is composed of a number of census blocks; is that right?

A Yes.

Q Okay. And a voting tabulation district is similar to a precinct, at least in Virginia?

A Yes. At this time in Virginia it is.

Q Okay. Is this a common tool in the field of geospacial analysis?

A Yes. A dot density map is a way to show a couple of [165] important things at the same time. So we're showing not only the racial composition of an area, but we're showing the population density of that area. And we're showing the precise location of individuals within a VTD, or within a district. And that can be very important beyond just kind of treating the VTD as a whole. Because as was described I think by a couple of fact witnesses, many census blocks are unpopulated. So we have census blocks that are --

JUDGE PAYNE: You're at the point where you're talking beyond the question, and I think we'll get where we're going faster if Mr. Hamilton asks a question, you answer just the question that you're asked. If he wants more, that will be fine.

THE WITNESS: Okay. Thank you.

JUDGE PAYNE: But before you do that, you're saying that you used the census block and you took the data from the census; is that right?

THE WITNESS: Yes.

JUDGE PAYNE: And a census block is what?

THE WITNESS: A census black is just what it sounds like. In a city, just think of a city block. So it's just very small geography that covers one block. And so it can be often fewer than a hundred people. But what sometimes happens is there are many blocks that are [166] unpopulated.

JUDGE PAYNE: Or thousands of people if there were highrises?

THE WITNESS: If there were highrises, it might be a thousand.

JUDGE PAYNE: And you got the race from the census data in each block?

THE WITNESS: Yes.

JUDGE PAYNE: And then you plotted on this exhibit where the black and the white races were?

THE WITNESS: Yes. And so we don't see the block boundaries on this map because that would take over -- all you would see is a tangible of boundaries. But we can think of -- every time we see one of these maps, we can think about all these dots are placed inside the boundaries of the block. That's how they get placed where they are.

Q So maybe I can ask a couple of clarifying questions. When we're at the census block level, you've got data that's reported from the United States Census, correct?

A Yes.

Q And that data includes population?

A Yes.

Q And it includes the race and ethnicity of the individuals who live within that block?

[167] A Yes.

Q But it doesn't tell you where each individual actually lives?

A Correct.

Q So let's say in your -- we've got a city -- a census block with a hundred people in it. How do you plot the location of those people since we don't know exactly where they live, those hundred people within that census block? How do you deal with that?

A So those dots are randomly placed within the census block because --

Q Is the white -- are the white dots treated any differently from the black dots?

A No. They're both randomly placed within the block.

Q Can you explain why that's useful?

A Well, yes. Because when we're looking at a map like this, when we get down -- when we have the individuals placed within the blocks, we can see not just where -- where the -- for instance, the African-American voting percentage is high. That's interesting, but it's more interesting to know how many people are there. So we might have a place where the African-American voting age population is 80 percent, but it might be a place that is largely unpopulated that only has a couple of -- a little sliver of population. And these maps will show us where [168] the population is located, and the density of the population.

JUDGE PAYNE: Including age population?

THE WITNESS: Yes. All these maps will be voting age population.

JUDGE PAYNE: Not the voting population?

THE WITNESS: Correct.

Q All right. So let's -- so this here, we're looking just at the Richmond area, and then you've plotted the -- in a very general level, some geographic features like cities and rivers. And then over the top of that, we see dot density; is that right?

A Yes.

Q So in just a sentence or two, what does this overview tell us as we try and draw -- or what conclusions can the Court draw from -- from this map at this high level of the whole region?

A It simply gives us an overview of where white and African-American residents of the region reside. And it gives us kind of a preview of what kinds of things have to be done in order to create -- in this case, six -- well, we'll really be talking about five 55 percent African-American districts. So the starting point is to see that there is an African-American population in the northeast of Richmond and then on the south side of the [169] river, and then there is, of course, a concentration around Petersburg and there is a much smaller concentration around Hopewell, and there is a -- a surrounding rural African-American over in Charles City County and, as was discussed earlier, down in Dinwiddie.

Q Okay. Maybe we can go to the next slide. This is Exhibit 2 from your report. Can you explain what this is?

A This simply overlays on that geography the lines of the benchmark plan.

Q All right. And if we go to the Figure 3 on page 14 of your report, what is this?

A This overlays the lines of HB 5005 in black, and the challenged districts are in bold.

Q Okay. And this is as adopted in HB 505 -- 5005?

A Yes.

Q So if we go back and forth between these two, we can see how the map changed from the benchmark to the adopted plan; is that right?

A Yes. It brings to life some of the maps that were already discussed earlier today. We see the split of Dinwiddie County, and we see the movement of Hopewell from 74 to 63. We see the expansion of --

Q All right. Why don't I stop you there and let me direct your attention to District 71. Let's start there. It's Figure 4 on page 18 in the next slide. I think the [170] discussion starts on page 15 of your report. This is Jennifer McClellan's district; is that right?

A Yes.

MR. HAMILTON: And, Your Honors, if it's easier, there's a hard copy -- there's a binder with hard copy paper versions of all these maps as an illustrative exhibit that's been provided to you. I believe they are on the bench, or perhaps in the bookshelves behind you.

BY MR. HAMILTON:

Q So --

JUDGE PAYNE: Are they bigger than the ones that are in his report?

MR. HAMILTON: Yes.

A It might be helpful to zoom in on these a bit closer, if that's possible.

Q Well, not quite yet.

A Okay.

JUDGE PAYNE: Do you want yours?

JUDGE KEENAN: I think I'm okay. Thank you.

JUDGE PAYNE: All right.

Q All right. So the incumbent here was Jennifer McClellan. This is downtown Richmond; is that right?

A Yes.

Q Is this courthouse in this district?

A Yes.

[171] Q So what was the racial and population composition of this district at the time of the redistricting?

A Yes. This was a district that was well short of the 55 percent African-American voting age population target at the time of the benchmark district. It was 46.3 percent African-American, and it was also underpopulated. So it needed to gain around 6000 people.

Q And had Delegate McClellan -- so is it 46 percent BVAP? Is that what you said?

A Yes. A little over that.

Q Had Delegate McClellan had any trouble getting reelected in this district?

A No.

Q Did you examine her election results?

A Yes. There's a nice website that has all of the precinct level results going back historically. So I did analyze those.

Q And what was her margin of victory in the most -- in the 2009 election just before redistricting?

A She received 82 percent of the vote in that one.

Q So looking at Figure 4, which is on the screen, this is House District 71 in a dot density format showing the VTDs in this area?

A Yes.

Q So we're going to click through several slides here. [172] So the next slide, this is the same map but with all of the data stripped out of it, just showing the VTDs in the area; is that right?

A Yes.

Q And then the next slide. This is now showing the racial distribution population within the same area?

A Yes. And the county boundary is in green as well.

Q All right. That's the green line?

A And then --

JUDGE PAYNE: Which one are you talking about?

MR. HAMILTON: It's the illustrative exhibit --

JUDGE PAYNE: Which Figure 6? Figure 7? What?

MR. HAMILTON: It's not -- this is an illustrative exhibit that we've created by taking Figure -- the original figure out of his report, which was Figure 4,

and then stripping it for the purposes of electronic display It's also in your hard copy notebook. I believe Judge Allen has the page there. So we're going through page 8, 9, 10 and 11, and then, of course, on the screen we're displaying it.

JUDGE PAYNE: The record is going -- it's going to be hard to follow the record without knowing what you're talking about. Are you on page 10 of the illustrative exhibit?

MR. HAMILTON: Right now, we're on page 9 of the [173] illustrative exhibit.

JUDGE PAYNE: Page 9. Okay.

MR. HAMILTON: That's what's displaying on the screen.

JUDGE PAYNE: All right. And page 9 is what?

THE WITNESS: This is simply the Richmond area with VTD boundaries in red. The racial data that we've been discussing with black-and-white, and green is the county boundaries.

Q Okay. If we turn to the next page.

JUDGE PAYNE: That's 10 in the illustrative exhibit; is that right?

MR. HAMILTON: That's correct, Your Honor.

Q Dr. Rodden, what is this?

A This is the same map but with the benchmark boundaries superimposed.

Q And the next slide, which is page 11, of the illustrative exhibit?

A That is the same map but with HB 5005 boundaries superimposed.

Q So if we flip back and forth between these two slides on the screen, you can see how the district changed? You can do to the same thing with paper copies, but Your Honors, I believe it's a little easier to see on the screen when you see how it changes. Now, in broad terms, [174] if a map drawer wanted to achieve a 55 percent black voting age population in House District 71, what did they have to do to achieve that?

A Well, it was necessary to add substantial population. There was a broad problem that the -- that the urban districts, especially 71 and 69, were underpopulated relative to the suburbs. Many of the surrounding suburban districts were overpopulated. So it was necessary to increase the population of District 71 by a substantial amount, but yet, at the same time, the goal was to get from 46 percent African-American voting age population to 55 percent African-American voting age population.

Q So in order to do that, you had to either add African-American population or subtract white population; is that right?

A Well, in the report, I show that one actually has to do both. It's not possible to reach that target by only adding African-American population. So if it was possible to simply add a group of completely African-American VTDs, it still wouldn't be enough. It would still not be at the 55 percent target.

Q Okay. And if we look at these areas, are there areas of significant concentration of white voters and areas of significant concentrations of black voters that were moved?

[175] A Yes. The -- there was a general movement of the district from west to east to remove some of the white voters in the east and a few to the south and then pick up African-American voters in the districts -- in the VTDs to the east.

Q Okay. Delegate McClellan testified this morning. Were you in the courtroom when she testified?

A I was.

Q And she testified about VTD 207. Can you just point that out, where that is on the map? Maybe circle it with your finger.

A Okay.

Q And what's the racial composition of that district?

A It's overwhelmingly white.

Q What its political performance?

A It's very democratic.

Q And was that -- in the benchmark, was that in House District 71 or out?

A That was -- in the benchmark was in HD 71.

Q So this is a large VTD of largely white democratic voters that was removed from Jennifer McClellan's district?

A Yes.

Q And where was it placed?

A In District 68.

[176] Q And who was the delegate there?

A Delegate Loupassi.

Q Is he a democrat or republican?

A Republican.

Q Okay. So white democratic voters were moved into a republican district; is that right?

A Yes.

Q Okay. What other -- was the removal of HD -- I'm sorry -- of VTD 207 significant to your analysis?

A Well, it was -- it was a very densely populated, very populous white VTD. And as I described, it was necessary to add white voters, and so this was a VTD that helped accomplish that.

Q Add or subtract white voters?

A I'm sorry. Add white voters to the surrounding district. You had to remove the white voters from District 71.

Q Did that change make this district more Richmond-centric?

A No, not that change. It made it a little bit less so.

Q Okay. How about the movement of VTD 701, 702 and part of 703? Do you see where that is? Can you maybe circle that for us?

A Yes. It might be helpful to have the map that was -- [177] actually, the figure in the report that has the blue lines as well to show us where the -- yes. So here, we can see more clearly which VTDs were removed. The blue line helps capture that.

Q Okay.

A So those were the VTDs that were heavily African-American VTDs that were taken from District

70 and placed in District 71, which had the effect of increasing the African-American voting age population of House District 71.

Q So this is a concentrated group of African-Americans that were moved into House District 71?

A Yes.

Q Okay. And then how about VTD Ratcliffe? We heard some talk about that this morning. Can you point out where that is?

A That is right here.

Q So that's the upper northeastern corner of the district?

A Yes.

Q And was the addition of Ratcliffe significant to your analysis?

A Yes. That's a large VTD both geographically and in terms of population, and it includes a lot of African-American voters. So that was another move that [178] helped increase the black voting age population in the district.

Q Did that -- was that an addition of another part of Richmond or was it a different part of the area?

A That move reached across the Henrico County line and brought in Henrico County to that part of the district for the first time.

Q All right. And I think you've already talked about whites being removed from HD 71 with -- in VTD 207. Are there other examples of where white population was removed from House District 71?

A Yes. The most obvious one is up here in some districts that had been part of -- some VTDs that had

been part of District 71 that are in Henrico County. So there was a removal of three of these, Summit Court, Stratford Hall and Hilliard. So as we can see here, there were some western Henrico white VTDs that were removed, and then there was kind of a slightly larger number of people added in Henrico to the east in the Ratcliff VTD.

Q Let me direct your attention to -- maybe I should erase these lines here first. Can you point out HD -- I'm sorry -- VTD 505?

A Yes. That was also discussed earlier today. That's the one down here.

Q Okay. Did you examine that in your report?

[179] A Yes.

Q Now, I'll tell you that the Court, this Court, in its memorandum opinion on page 134, indicated that the decision to split this VTD advanced other neutral principles such as compactness. If the goal was to advance the compactness of District 71, would this VTD be split the way it was split?

A Well, it -- this is where I think the dot density map is useful, because we can see that this VTD only has some population over in the Oregon Hills neighborhood, which is over here. So it would have been possible to slice off the noncompact segment without losing any voters.

Q And what's in the western side of this -- of this VTD?

A Cemetery and some park land.

Q So fair to say, no voting age population resides in 5005 -- in that part of 5005?

A In 505, correct.

Q 505, right. So if you wanted to advance compactness, how would you have split the district?

A Well, it seems if that was the only goal and one wanted to keep the population together, it would have been possible just to have included the Oregon Hills neighborhood in the -- in the -- in District 71.

Q All right. Let's turn to Exhibit 69, Your Honors. [180] This is illustrative exhibit page 12. So this is the same thing. Am I correct? This is Figure 6 from your report? This is a composite map showing both the benchmark as well as the adopted plan; is that right?

A Yes.

Q And this is Delegate Carr's district?

A Yes.

Q So if we click to the next slide, that's page 14 of the illustrative exhibit, this is the same thing stripped down, just the area with the VTDs; is that right?

A Yes.

Q And the next page, page 15. This is the -- of the illustrative exhibit. This is the same thing now with the racial density dot map added?

A Yes.

Q Okay. And if we go to exhibit -- illustrative Exhibit page 16, what is that?

A That is the same information but with the benchmark boundary.

Q Okay. And then if we go to the next page, that's page 17, this is the HB 5005 as adopted map?

A Yes.

Q And if we click back and forth between these two, we can see how this map changed?

A Yes.

[181] Q Okay. So can you describe -- can you describe the composition -- the population and racial composition of this district at the time of the redistricting?

A Yes. So this one was far short of the population goal. It had a population of 71,300. So it needed to add almost 9000 individuals. And the African-American voting age population was 56 percent. So it was just above the -- above the threshold. And so if it was -- if the desire was to achieve equal population while maintaining the threshold, then it was necessary to make sure that the population that was moved in was roughly half African-American.

Q So how was -- and maybe we can go back to illustrative Exhibit 12. There we go. I'm sorry. Illustrative Exhibit 13, which is Figure 6 from your expert report, which shows both the benchmark and the adopted plan. How was adding population achieved in House District 69?

A Well, the district expanded in a few different ways. So it took in -- if we kind of go clockwise and starting at the top, it took in the VTDs 402 and 508 and 609 in the northeast and then -- and those came from District 70. And then it also took, from District 70, the VTDs 911 --

Q So why don't we start with this first area and I'll just circle it on the screen here. This took -- I think [182] you said 402, 508, 609. And then did it also take

part of -- the other part of 505 that we just talking about?

A Yes, that's right. So it reached across the river and included that.

Q And what was the racial composition of this? I think we can see from the map, but maybe you could describe it for the record?

A Yes. That's a white neighborhood on the south side of the river.

Q Now, all else being held constant, if the map drawers had just added these northern white VTDs; that is, 402, 508, part of 505 and 609, what effect would that have had standing alone on the black voting age population of House District 69?

A Well, that would have pushed the African-American voting age population below the 55 percent target.

Q So let's take a look at what other changes were made to this district. So we'll go on moving around clockwise. I see that VTD 903 and 811 were added. Could you describe those?

A Yeah. Those are dense, or relatively dense, and overwhelmingly African-American VTDs that had been in District 70, and those were moved into District 69.

Q And do you recall what the black voting age population was in those two VTDs?

[183] A 903 was 64 percent, and 811 was 76 percent.

Q Okay. So both a fairly high black voting age population moved in?

A Yes.

Q Was that significant to your analysis?

A Yes. That helped increase the African-American voting age population of the district.

Q And where did they come from?

A Those came from District 70 to the south, which --

Q And what was the -- what was the -- at the time of the redistricting -- we'll look at District 70 separately. But at the time of the redistricting, what was the racial composition of District 70?

A District 70 had one of the largest African-American voting age population shares in the region. It was at 62 percent, and it was already at equal population. It was within the threshold.

Q Okay. So this black population moved from 70 to 69, bringing down the black voting age population of 70 and increasing the black voting age population of 69; is that right?

A Yes.

Q Okay. Then continuing moving west, what happened with Belmont, Manchester and Beaufont?

A Belmont was moved into District 70, and that is -- [184] that is about a 50/50 racial breakdown in that VTD. But the -- the other two VTDs on the west were moved to District 27, which had been -- previously was -- at the time of the benchmark, was quite overpopulated.

Q So is that significant? Why was it being moved?

A Well, there was -- there's a general -- as I described, in general, the City of Richmond is -- is

losing population relative to the suburbs, and the suburban districts are overpopulated. So one might expect to see, in that situation, that some of those -- some of those suburban VTDs would make their way into 69 since it was underpopulated. And there were already some -- some Chesterfield VTDs in District 69. But in spite of that, it lost some of these suburban VTDs.

Q So you would have expected to see the opposite. Since House District 27 was overpopulated, you would have expected to see it shedding population toward District 69 and instead, the opposite happened; is that right?

A Yeah. In my experience, typically that's what happens with these kind of spillover effects of population loss in city centers. But in this case, the population really was brought in from elsewhere, from District 70.

Q Let's focus on the VTD 410. Can you point out where that is? Was that VTD split?

A Yes, it was.

[185] Q And how was it split?

A Well, the VTD is kind of a long VTD that goes all the way up to the river, and it has -- it has a larger African-American population on the south side and then up on the other side of the -- I guess on the other side of the line, it's -- the population is relatively -- the white population is larger. And so you can see the split there kind of happens at the narrowest part of that VTD.

And that also -- that also, it should be pointed out, preserves a corridor for 68. So 68 is kind of a district -

- this is Delegate Loupassi's district, which goes from the -- kind of the west side neighborhoods of Richmond and out into the suburbs. And so by splitting that VTD, it also opened up that corridor to the suburban parts of District 68.

Q The VTD was split. The portion of the VTD that was included in House District 69, how would you describe that portion?

A That was the more African-American part of the VTD.

Q And the portion of this VTD that was included in House District 68, how would you describe that portion?

A It was relatively -- relatively white, relative to the part that was kept in 69.

Q So was a division of this VTD along racial lines?

A Yes.

[186] Q And what was the ending black voting age population of House District 69?

A It ended up at 55.2 percent.

Q Okay. Let's move to House District 70. This is Delegate McQuinn's district; is that right?

A Yes.

Q This is just a bit to the east of where we were just looking; is that right?

A Yes.

Q So let's click through a few maps here. If we turn to the next page, which is the 20th page of the illustrative exhibits, this is VTDs without the district lines, right?

A Yes.

Q And page 21 of the illustrative exhibit is the same thing but with the racial data distributed over the top of the map?

A Yes.

Q And the next page is the benchmark, is that right, in House District 70?

A Yes.

Q And then the next page is the House District 70 as drawn in the final map; is that right?

A Yes.

Q So if we click back again between these two, we can [187] see how this district changed between the original benchmark and the adoption of the final plan; is that right?

A Yes. Above all, we see kind of a westward movement out in the southwest part of the district into the suburbs.

Q Okay. Can you describe the population and racial composition of this district at the time of the redistricting?

A Yes. This one, as I believe I described earlier, was already at the population threshold. It was about 79,400. And the racial composition was such that it had almost 62 percent black voting age population. So it was one of the largest in the Richmond area.

Q And I think we already talked briefly, when we were discussing House District 71, the neighbor to the west of the top part of this district, VTD 701, 702 and 703. Can you point those out here on this map?

A Yes. Now, we're seeing them from a different perspective, but they are right there.

Q And is that the most densely populated area of African-Americans that were in House District 70 to start with?

A I believe so.

Q Okay. And do you know what that's comprised of? Do [188] you know who lives there?

A I -- I believe there's some public housing buildings in that -- in those VTDs.

Q Okay. And you testified already, these VTDs were moved from House District 70 into House District 71?

A Yes.

Q And the effect of -- can you describe the effect of moving these two and a half VTDs from District 70 to District 71, the effect on the racial composition of the two districts?

A Yes. This is where it's important to understand the way these districts kind of interlock and try to understand the regional dynamics. So if the goal is to reach 55 percent in all of the districts, one has to be very careful because District 71 needed a lot of African-American voting age population and it was difficult to achieve without moving some of these very dense, very populous African-American VTDs.

And as we see here, District 70 had a -- started out with a rather high African-American voting age population. So it had -- it had the population that District 71 needed. And so this move was -- appears to have been very crucial in meeting the target in 71.

Q How would you describe -- is it fair to describe that area of 701, 702 and part of 703 as a stark difference [189] between the racial composition of that VTD and the surrounding VTDs around it?

A Which one? 701 and 702?

Q 701 and 702. Right in the center of your circle there.

A Well, they are in the midst of a dense African-American part of Richmond, and it moved a neighborhood -- you know, a heavily African-American neighborhood from one district to another.

Q All right. What other VTDs were moved out of District 70?

A There were a couple of -- a couple of rather sparse and relatively small VTDs on the -- on the eastern side of the district. But there -- as we discussed earlier, there were some VTDs along the river that were -- that were moved from District 70 into sixty-nine. And then as we -- as we move to the west, we also discussed districts that had been -- that had been moved from 70 into 69.

Q So let me direct your attention to VTDs 903 and 611. Can you see those on the map?

A I believe it might be 811, if I -- if the -- the numbers are very small.

Q And can you describe the racial composition of those two VTDs?

A Those are majority African-American, large majority [190] African-American VTDs.

Q And I think it's 903 and 611; is that right? I'm -

A The marker is right in front of it right now so it's hard to see. Yes, I think that's right.

JUDGE PAYNE: I don't see 611. Where is it?

MR. HAMILTON: 611 in the blowup is right here in the map. I've just circled it on the screen, Your Honor. It's directly above 606. Do you have it, Your Honor?

JUDGE PAYNE: Yeah.

MR. HAMILTON: Okay. Thank you.

JUDGE PAYNE: Thank you.

Q So, again, can you describe the effect on the racial composition of District 70 of moving these two VTDs?

A This is part of a larger -- a larger set of moves in this area in which District 69, in order for it to gain population, without gaining too much white population, it was necessary to move some African-American population from surrounding districts, and District 71 certainly wasn't an option, given how difficult it was to achieve the target there. So 70 was -- was the option. And so African-Americans were moved from 70 into 69. And that had the effect of preserving that 55 percent threshold.

Q In which district?

A In 69. Of course, 70 had -- had -- started out with [191] 62 percent African-American voting age population. So it -- if there was to be a plan that created 55 percent districts in all six, it was necessary for some of those to be removed from 70. It couldn't have worked otherwise.

Q Okay. So this is an instance of District 70 donating two heavily African-American VTDs to its neighbor, House District 69; is that right?

A Yes.

Q Okay. And what effect did that movement have on the population, the total population of House District 70?

A Right. So as we've been discussing, 70, in all these moves we've seen so far, has been losing population. It started out at the population threshold, but then it shed population up there in the northern turret. It shed population over along the river and it shed population in 903 and 611. So at that point it then had to pick up some population.

Q And where was that population added from?

A So there were a group of VTDs in the southwest of District 70 that were really the only VTDs in the entire Richmond area that had not previously been -- that were African-American majority VTDs that had not previously been included in one of the -- in one of the districts in the benchmark plan. So the district --

Q Which were those, sir?

[192] A Those were Southside, Meadowbrook, Falling Creek and Chippenham.

Q So this is all in the southwest corner of the map that we're looking here, which is Figure 7, page 28 of your report?

A Circle those as well.

Q All right. This was newly added territory to the district; is that right?

A Yes.

Q And what county was that in?

A I believe that was Chesterfield.

Q Had Delegate McQuinn previously represented that area?

A No.

Q And you were here in the courtroom this morning and heard Delegate McQuinn express her concern about this change adding this part of Chesterfield to her district. Did you hear that?

A Yes. It seems like a rather different type of area from the rest of the district.

Q All right. How did this track the suburban population growth in this area?

A Well, one of the features that was interesting to me in understanding this area was that as in many other American cities, there's an ongoing process of [193] African-American suburbanization. And so we see the African-American population moving from city centers out into suburban areas. And what we see here is that the boundaries of the -- of the majority/minority district simply follow the population flow and reach further out and bring in these majority African-American VTDs into District 70.

Q Does the district --

JUDGE PAYNE: Excuse me. What are you saying -- you said that the one with Chippenham, Falling Creek, Meadowbrook and Southside was different. What do you mean by different --

THE WITNESS: Well, this is --

JUDGE PAYNE: -- other than the racial composition? How else was it different?

THE WITNESS: These are suburban places that are in a different county. So this is an interesting district where it has -- part of the district is up in the kind of south side area of Richmond and then it goes through a very suburban and ex-urban part of Henrico, and then it comes back into another part of -- another part of --

JUDGE PAYNE: I'm sorry. I thought you were talking about it was different than what McClellan had previously represented.

MR. HAMILTON: Not McClellan, Your Honor. [194] McQuinn.

JUDGE PAYNE: Yeah. Thank you.

THE WITNESS: So it had these two parts of Richmond and it had a part of Henrico, and now it's adding a suburban part of Chesterfield. So it's got kind of two different suburban populations.

JUDGE PAYNE: But you said it was different. How is it different? I don't understand that. If you know this area, if you look at the area you're talking about and you look at the Henrico area, how are they different other than by your dots?

MR. HAMILTON: Well, and other than by being in two different counties?

JUDGE PAYNE: No. Other than by your dots, how are they different?

THE WITNESS: I was merely pointing out that these are more sparsely populated, single-family home suburban areas that were being added to a district that had more of a concentration in multiple family housing in urban areas before.

Q Maybe I can ask a couple of clarifying questions. Number one, prior to this move, had Delegate McQuinn had any part of her district in Chesterfield County?

A No. I don't believe so.

Q Okay. And we talked about how in 701, 702 and part [195] of 703 there were some public housing projects with densely populated African-American populations. Do you recall that?

A Yes.

Q Okay. Are there any densely populated African-American populations and public housing projects in Chesterfield County in this area that we're talking about?

A No.

JUDGE PAYNE: In what area?

MR. HAMILTON: In Chippenham, Falling Creek, Southside and Meadowbrook, Your Honor.

JUDGE PAYNE: And your testimony is there are no African-American housing areas, public or otherwise, in that area? Is that what you're saying?

THE WITNESS: I wouldn't be able to testify there are none.

JUDGE PAYNE: I wouldn't think you could.

THE WITNESS: I don't have that knowledge.

Q Is the population density the same in the two areas?

A No. These are sparser than the urban districts, which I think is clear.

Q Okay. Which is more densely populated with African-American population?

A The northern turret of all of these neighborhoods. [196] That's the area that has the densest population.

Q And that's where 701, 702 and 703 is?

A Yes.

Q And those are the portions that were given -- or carved out of this district; is that right?

A Yes. That's the only observation I was trying to make there.

Q All right. Thank you. Does the way the district was changed, did that adhere to traditional redistricting principles, as you understand them?

A Well, insofar as it crossed another county boundary, and really, it's a district that combines, as I was describing, some rather disparate neighborhoods. So I would say no.

Q All right. Let's turn to Exhibit -- I'm sorry. To District 74, a little further east. This is Delegate Morrissey's district; is that right?

A Yes.

Q And we'll go through the same set of maps quickly. Page 26 on the illustrative exhibit is the area of where House District 74 is located; is that right?

A Yes.

Q And then the next page, page 27, is adding the population and race data?

A Yes.

[197] Q And the next page, page 28, shows the benchmark plan?

A Yes.

Q And the next page, page 29, this is the adopted plan; is that right?

A Yes.

Q So if we go back and forth between those two last slides, we can see the changes in this district?

A Yes. The main things we see are the extraction of the African-American neighborhood in Hopewell to the southwest, and we see the -- what I think is referred to as the thickening of the neck of this district there in the middle.

Q Okay. Let me start with, can you describe the population and racial composition of the district at the time of the redistricting?

A Yes.

JUDGE PAYNE: Excuse me just a minute. I want to make sure I've got the right place. Seventy-four is the benchmark, all in the blue; is that right, Doctor?

THE WITNESS: The blue is the benchmark, yes.

JUDGE PAYNE: And then 74 with all the black around and down is the enacted one, right?

THE WITNESS: Yes, Your Honor.

JUDGE PAYNE: And you're saying those two differ how again? That's what I'm trying to follow.

[198] THE WITNESS: Yes. So that's -- they are -- the differences are -- require a little bit of squinting, but the southwestern part of the city of Hopewell is divided right in half, right between the white

population and the African-American population. So the African-American part of Hopewell was in District 74, and it was -- it was -- we see that it was removed and placed in District 63. So that's something that doesn't jump out at us when we first look at the map, but --

Q So if we go to page 25 of the illustrative exhibit, which is your Figure 8 on page 31 of your expert report, we can just circle that area there, and you can see that's a Hopewell river crossing that was removed in the change in House District 74; is that right?

A Yes.

Q And there were also some changes up along the -- what's referred to as the neck of the district?

A Right.

JUDGE PAYNE: That's where you said it was thickening?

THE WITNESS: Yes. In the center part, we see how it gets a little thicker.

JUDGE PAYNE: Yeah.

THE WITNESS: And then we also see over here, that some of the -- there are some VTDs and actually split [199] VTDs that are changed in the district boundaries over there as well.

Q All right. When we start with -- when the map drawer sat down to do House District 74, what was the population and racial composition of this district at that time?

A So this is -- it has a lot in common with District -- District 70 in the sense that it -- it started out with a population -- a total population that was within the

threshold. So it was 80,153. And it also started out with a very high African-American population. Almost 63 percent of the voting age population was African-American. And that is, I think, the highest in the Richmond/tri-cities area.

Q Okay. And in your report, you indicate that this district played the role of a donor district; is that right?

A Yes. I classified both 70 and 74 in that way. And then, again, this is really just the math of how we can achieve six 55 percent African-American districts in the region. Some -- some African-Americans have to move out of the overpopulated districts, 74 and 70. And so that is -- that is something that is happening here with 74. It starts out with a very large African-American population, and it gets down from 63 to around 57 percent. And that's because African-Americans are being moved from [200] 74 into 71, for the most part, and also into -- into 63.

Q Okay. So let's talk specifically about that. You said in the benchmark, House District 74 had a part of the city of Hopewell; is that right?

A Yes.

Q And which part did it have?

A There's kind of a north/south or -- it's really more east/west, I guess, divide in the city between whites and African-Americans. And we can see that --

Q Let me just stop you and just ask the question again. In which part of House District 74 -- which part of Hopewell did House District 74 have in the benchmark? Did it have the black part?

A Yes. It had the eastern African-American part.

Q And is that the part it gave up?

A Yes.

Q And where did that go?

A That went to District 63. I believe that process was described this morning.

Q Okay. And did House District 63 get all of -- of the city of Hopewell?

A No.

Q So it was -- it continued to be split?

A Yes. I believe the nature of the split was even a bit more precise this time. But there was a -- there was [201] a split again in 63 down the middle of Hopewell.

Q And when you say "even more precise," even more precisely in what way?

A Along racial lines.

Q Okay. And where did those two halves of the city go?

A The African-American part went into District 63, and the white part went into District 62.

Q And 63 is one of the challenged districts?

A Yes.

Q And is -- what is 62?

A Sixty-two is a suburban district that I believe is represented by a republican delegate.

Q Okay. And isn't this just fixing a water crossing by eliminating a part where House District 74 jumped the river to pick up part of the city of Hopewell?

A Well, it does achieve that. But there's also a crossing just to the north of the Appomattox that is not

changed, and there are many other -- of course each, of these districts we're looking at has crossings of the James.

Q Let's take a little bit of a closer look at the northern part of this district. This is page 30 in the illustrative exhibit. It's Figure 9, page 33 of his underlying report. Can you describe what we're looking at here?

[202] A Yeah. We were talking about the neck of the district. This is a district that I can't help but think looks like a meat cleaver, and this is somewhere on the handle of that thing toward the end. This is the northern tip of the district. And we see in black the new district boundary, the enacted district boundary, and in blue we see the benchmark district boundary.

Q Let me direct your attention to VTD Randolph. Can you point out where that is?

A I believe it's that one. Yes.

Q What happened with this VTD?

A Well, this is just a -- this is a VTD, I think, that helps demonstrate what I believe is quite stark in looking at this map; that the district boundary kind of follows along the residential -- the line of residential separation between African-Americans and whites. So this is an instance where the district kind of jogs out and adds a VTD that is African-American and pushes up the African-American voting age population of District 74. And it kind of jogs back in and misses a white VTD.

JUDGE PAYNE: Where is this Randolph that is shown on Figure 30 of the illustrative exhibit on page 28 and page 29 of your -- of those exhibits?

MR. HAMILTON: It's at the far north -- if I can answer that question for, Your Honor, unless you'd like [203] the witness to.

JUDGE PAYNE: Yeah, let him.

MR. HAMILTON: Okay.

THE WITNESS: In which figure are we looking at?

JUDGE PAYNE: There's a blow -- or Exhibit 30 -- or page 30 of the illustratives is a blowup of the western most part of the district, and the benchmark is 74 and that's on -- 74 is on page 28, and the benchmark -- I mean the House Bill 5005 is on page 29. And I'm trying to figure out where on pages 28 and 29 this Randolph area is that you're talking about. Can you flip to those slides so I can see where he circles it?

MR. HAMILTON: The circles are gone, Your Honor, but we can go back.

Ms. Marino, if you could go back a couple of slides here.

THE WITNESS: It might be possible to answer your question without --

MR. HAMILTON: Right there.

THE WITNESS: Oh, okay.

JUDGE PAYNE: Well, where is it?

MR. HAMILTON: I think what Your Honor may be asking is was this changed in the HB 5005?

JUDGE PAYNE: That's what I'm getting to.

MR. HAMILTON: It wasn't changed. That was my [204] next question.

JUDGE PAYNE: Well, what difference does it make if it wasn't changed was my question so I understand why we're talking about it?

Q So was there a choice that the map drawers made about to leave certain lines and add -- and change other lines?

A Certainly. The approach I took in my report was to examine the districting decisions, whether those involved keeping lines or moving them. So when I found evidence of a stark racial split, I included that discussion in my report. And it -- some of those involved changes and some of those involved decisions not to make changes.

Q Okay. And this was one -- in the latter category, this is a stark racial line that existed in the benchmark map and was maintained in the adopted map; is that right?

A Yes. And it's an important part of the analysis because it's not -- in much of the region under analysis here, it would not be possible to make moves that would make the racial splits more stark. They were already as stark as really could be imagined. In some places, it experienced a lot of suburbanization. There were moves that were made and the lines then moved to follow, but this was not one of those situations.

Q Let's return to the closeup of that area we were just looking at. It's page 30 of the illustrative exhibit. [205] It's look at the choices -- the lines that were changed in this area. May we first -- there are two split VTDs here. Can you identify them?

A The one to the north is called Brookland, and there is one called Belmont.

Q Okay. Why don't we look at Brookland first. How was that VTD split?

A It's a strangely shaped VTD. I'm afraid this one might be a bit difficult to see, but it involves -- it involves -- so we can see it kind of moves around -- now the circle needs to be removed.

Q So the question is how was it split?

A It was split such that the western side that was white was kept out of the district and the inside part, the eastern part that was more African-American, was kept in the district.

Q So I'm just going to put an arrow on the screen, and you tell me if I've got this wrong. The arrow on the right is pointing to the word Brookland, and there's a blue line that's right above it; is that right?

A Yes.

Q And then the other line on the left that I've drawn is the other side of the Brookland VTD; is that right?

A Yes.

Q Which side has the more concentrated African-American [206] population?

A The east side.

Q And where was that assigned?

A Into District 74.

Q And which side had the predominately white population?

A The west side.

Q And where was that assigned?

A Into District 73, I believe it is. No. It might not be.

Q The neighboring district?

A Yes.

Q The neighboring district; is that right?

A Yes.

Q Okay. And then what other VTD was split here?

A To the south, there is a district called Belmont.

Q Okay. And how was that split?

A In a similar fashion. We see that there's a dense -- I'm sorry. We should --

Q Is that Belmont that I've just circled on the screen?

A Yes. So we see that the line was -- the split of the VTD happened using census blocks that placed an African-American population right next to the boundary on the east inside District 74 and white population outside of the district.

[207] Q Couldn't this have simply been done -- as a matter of politics, I mean, couldn't they have just split this in order to help the republicans on the white side of the line?

A Well, there's no -- there's no information available about voting behavior below the level of the VTD. Because we have a secret ballot, that is the lowest level at which -- which election information is available. It might be possible to -- to simply apply uniformly the electorial behavior of the entire VTD to each census block so that when one adds up political totals for a hypothetical district, they get a number. But it's not possible to carve through a VTD and divide

it up in that way and hope to achieve something politically.

Q Let me stop you, and I'm going to back you up there because I think this is an important point. Mr. Braden mentioned this this morning. Election results are reported at what level?

A At the precinct level.

Q At the VTD level?

A In our case, in Virginia, the same things as a VTD.

Q So let's just pause here and look at this particular one. Belmont, I think, is what we were talking about the Belmont VTD, we'll know how many votes were cast for democrat and how many votes were cast for republican and [208] how many votes were cast for independent candidates, correct?

A Yes. We can get that information at the precinct level for many different elections; gubernatorial, presidential and so forth.

Q Okay. So the data is available at the precinct level. So you can certainly make political divisions in assigning whole precincts from one district to another; is that right?

A Yes.

Q And at the census block level, I think you said election results are not available at the census block level; is that right?

A Correct.

Q And I think you said this, but let me make sure it's clear. You could take -- let's imagine a district that votes 60 percent republican and 40 percent

democratic. You would know that this VTD votes 60/40 republican/democrat; is that right?

A Yes.

Q Now, if you wanted to go into each VTD, you could attribute that split, 60/40 split, to each single block, right?

A Yeah. So one could go into Maptitude and give it a 60/40 number --

[209] Q Would that treat any census block within that VTD differently than any other census block within that VTD?

A No.

Q They'd all be the same?

A Yes. It would have to be. We simply don't have the information.

Q So if we went to the far north and grabbed the VTD up -- I'm sorry -- a census block up there, it would look exactly the same, politically speaking, as a census block in the far south?

A Correct.

Q And a census block in the east would look exactly the same, politically speaking, as a census block in the west?

A Yes. For someone who --

Q They're going to be exactly the same?

A For someone who does geo-spacial analysis, this is annoying. We would like to have more fine grain data, but we don't.

Q So at the risk of asking an overly obvious question, the data isn't available if you're going to split

a VTD to decide which census blocks are better or worse for you as a political matter? It's just not available at that level; is that right?

A No. It's --

Q That's not right?

[210] A No. The data are not available. So it's correct, yes.

Q Thank you, sir.

JUDGE PAYNE: Excuse me. But if you take a VTD and you figure it's 60/40, to use Mr. Hamilton's example, and you attribute everything as 60/40, why isn't it all 60/40 in the north and 60/40 in the south and 60/40 in the east and 60/40 in the west, if you're going to do it by attribution? Why doesn't that happen?

THE WITNESS: I think that that is what happens. So I think that when we take the Maptitude software and we want to start subdividing VTDs, we can go ahead and take the information from the VTD and attribute it in just that way to every block. So we can treat every block in that VTD as 60/40. But what that doesn't allow me to do is go through and pick democratic blocks and put them on one side and republican blocks on the other side because they're all 60/40.

JUDGE PAYNE: Well, if it's 60/40 republican and 60/50 democrat, don't you know then -- when you're doing it 60/40, aren't you attributing 60 republican, 40 democrat?

THE WITNESS: Yes. So when I add up the numbers for a district that I'm creating, then I can get a total that will tell me the partisan composition of that [211] district. But what I can't understand is how

we would go about choosing along these lines in order to achieve a political goal when we're just treating them all as the same.

Q In other words, you can't -- because every VTD is -- every census block is treated as the same in that kind of analysis, you can't figure out where the democrats are and the republicans are because they don't all live right next to each other in an even distribution?

A They're all interchangeable. If I wanted to get 60 democrats, any of the blocks would give me 60 democrats. I can weigh it by population, so some of them might have more people. But they're all going to be kind of politically, in my view, the same as I'm picking out those blocks.

Q Maybe to clarify this, I'll ask another couple of questions. Let's imagine a VTD that are at 60/40 present democrats and all the republicans live in the northern part of the district and all of the democrats live in the southern part of the district. You're not -- I guess that's -- you actually -- you would have to have that -- you don't have that data to do. Let's imagine that they're evenly distributed across the VTD, 60 percent democrat, 40 percent -- 60 percent republican, 40 percent democrat. If you wanted to get the democrats out, you [212] don't know where they live, right?

A Precisely.

Q Because the census block data treats it all the same?

A Right.

JUDGE PAYNE: You mean you don't know where they live based on this mapping?

THE WITNESS: Right. I -- we have a secret ballot so we just don't -- the VTD is just the lowest level at which we know anything about the individual's partisanship.

Q All right. Thank you. Let's move to exhibit -- House District 63. This is a final Richmond area district. This was Delegate Dance's district; is that right?

A Yes.

Q And were you here for Delegate Dance's testimony this morning?

A Yes.

Q So let's -- let's start by looking at a few of these. We're on page 32 of the illustrative exhibit. This is -- this is Figure 10 from page 34 of your report; is that right?

A Yes.

Q And if we click to the next slide, this is the same set of slides. So here's the area without any race data. [213] If we put the next one in, we can see the racial distribution. Page 35 shows the benchmark; is that right?

A Yes.

Q And then page 36 is the adopted map?

A Yes.

Q So if we click back and forth between these two, we can see some of the changes here. This is the -- I think the Court called it a validly racial split of Dinwiddie County; is that right?

A Correct. Yeah, to the south, we see that split come in and the hook that reaches up to bring up the African-American voting population of 75. And the other big noticeable change is the extension of the district to the east in a way that -- that picks up African-American neighborhoods in a rather -- in a rather precise way.

Q All right. So what was the population and racial composition of this district at the time of the redistricting?

A This was another one that needed to gain population. It had close to 74,000. So it needed to add 6000 population. The benchmark African-American voting age population was 58 percent. So it was -- it was a bit -- it was a bit above the -- above the threshold already.

Q All right. And I believe you've heard testimony that HB 5005 split Dinwiddie County in half; is that right?

[214] A Yes.

Q And was that significant to your analysis?

A Yes, because this created a kind of ripple effect where District 63 was already short on population, and in order to -- in order to achieve the 55 percent target in District 75, it was necessary to reach up into Dinwiddie County and take a substantial number of African-Americans and to even -- it wasn't quite enough to use only the sparse areas. So there was a move up into a somewhat denser area to bring up the voting age population, the African-American voting population of District 75 to 55 percent. So then that

left District 63 in a situation where it needed to gain substantial population.

Remember, it was already short by 6000. So now it needs to gain population, but it has a problem that's kind of familiar, which is that it's surrounded by some white areas. But there was -- there was a fairly obvious solution, which was to move the district to the east and to snake over and extract part of Hopewell and take that away from District 74, which had a very large African-American voting age population in the benchmark.

Q So let me stop you there. The district just to the south of the line, the District 63 border is House District 75?

A Yes.

[215] Q And that was underpopulated; is that right --

A Yes.

Q -- at the time.

A These places were often underpopulated.

Q And what was the racial composition of House District 75 at the time of the redistricting?

A It was almost exactly at 55 percent. But it needed to gain 10,000 people, and it was -- that was a challenge because it was surrounded by a lot of sparse population, much of which was white. So it was -- it was difficult to add that population without endangering that 55 percent target.

Q And so I think you -- you testified to this, but 75 moves north to pick up the southern part of what was House District 63. That's the first step, correct?

A Yes.

Q And then to compensate District 63 and add black voting population, this whole right arm was extended that went out to Hopewell; is that right?

A Yes. And just to be clear, the ending point -- for District 63, the HB 5005 African-American voting age population was 59.5 percent. So it ended up exceeding the target substantially. So this is a situation where it could have been drawn in a number of different ways to reach that target, but this is -- this is the -- these are [216] the lines that were drawn.

Q All right. Let's take a closeup look at this. This is Figure 11 from your report on page 36, and it's on page 37 of the illustrative exhibit, page 37. This is the eastern tentacle that moves out to the eastern end of House District 63; is that right?

A Yes.

Q So let's start first on the western side of this slide of this image of this map. How does it treat Chesterfield County?

A This is -- it reaches across the river and brings in an African-American neighborhood in the southern part of Chesterfield County and kind of draws the line right about at the line where there's a transition from African-American to white population. It comes over to the boundary of Colonial Heights, and there's a very sharp racial divide, we can see there, and the district line follows it.

Q Okay. So in Chesterfield County, was that split by HD 63 in the benchmark?

A It was.

Q Okay. And the split occurred right along racial lines; is that right?

A Yes. It was already that way in the benchmark.

Q So the part of Chesterfield that was included in [217] House District 63 was the African-American portion?

A Yes.

Q And the part that was included in House District 66 to the north is the white portion?

A Yes.

Q Okay. Now, you mentioned Colonial Heights. Is Colonial Heights an independent city in Virginia?

A Yes.

Q Is that the same as Hopewell?

A Yes. They are both independent cities.

Q So they are the same on that level. Is their racial composition the same or different?

A Colonial Heights is overwhelmingly white.

Q And how about Hopewell?

A It is heterogenous, but as we can see, residentially quite segregated.

Q Into a black area and a white area?

A Yes.

Q And Colonial Heights, did the map split Colonial Heights?

A No, it did not.

Q So it respected the borders of Colonial Heights?

A Yes.

Q And that's this border that deviates down and follows the line around; is that right?

[218] A Yes. We can see the green border of Colonial Heights in that image.

Q And then this arm that reaches out to split Hopewell divides it right along racial lines; is that right?

A Yes.

Q And the African-American portion of House District 63 is included in -- in House District 63 is the city of Hopewell; is that right?

A Yes. That section of Hopewell is in 63.

Q And the white portion is included in House District 62?

A Yes.

Q You said something about sharp -- the line was sharpened from before. Can you describe what you mean there?

A Well, I'm not sure. I can't see here where the boundary was before. It doesn't show --

Q We'll zoom in in a moment.

A But in any case, the divide here between the African-American -- part of the -- of Hopewell and the white part, the residential divide is rather clear. And the district line really -- I think the map shows very clearly that it follows that line quite precisely.

Q And when you say "that line," you mean the line dividing the white from the black population?

[219] A Yes.

Q And this is all new, right? This was drawn by HB 5005?

A Yes. This area was not in District 63 before. This area was in District 74. So this is all -- these are all lines that were drawn in HB 5005.

Q Okay. While we're here, and looking at this part of House District 63, there's this -- I think we've called it the New Hope hook that kind of comes in. Did you examine that in your analysis?

A I did.

Q And what was the significance of that?

A Mainly it appears to be an effort to bring in enough African-Americans into District 75. I did note that there were a numbering of VTD splits that helped achieve that.

Q Were there a number of VTD splits in this arm that comes up around New Hope?

A Yes.

Q And what were those VTD splits, if you know? I think it's on page 37 of your report, if I'm not mistaken.

A Rohoic, Rives and Dinwiddie.

Q Okay. And New Hope itself?

A Yes. I believe it might be the part of New Hope that was split was an unpopulated part.

Q Now, do you recall the explanation offered for why [220] all these VTDs were split and this arm reaching around?

A Well, my understanding is that there was an argument about a potential challenger that was being

-- was -- the effort was to avoid putting that -- putting that challenger into the district.

Q Okay. And you were here for the testimony this morning --

A Yes.

Q -- with concern to that? And I won't repeat it. Was splitting all these VTDs required for the purpose of excluding that potential challenger?

A I have no idea.

Q Why not?

A Well, I don't know where that challenger was located.

Q Did you try and find that out?

A I asked for that information. It didn't seem that anyone had it.

Q Okay. And regardless, did Delegate Dance have a strong challenger the very next election?

A Yes.

Q So this was an effort to draw out a challenger from her district. I take it it was not successful?

A No.

Q Okay. Is there any significance to the way that they divided -- that the map divides Dinwiddie County to the [221] south?

A Well, again, I think that is a divide that the Supreme Court has already determined was avowedly racial and was created for the purpose of increasing the black voting age population of District 75.

Q All right. Let's -- if we can zoom in on a Hopewell. This is page 39 of the illustrative exhibit,

and I think it's Figure 12 from your report on page 38. Can you describe what this is?

A This is a dot density map that zooms in on part of Hopewell. In particular, it focuses on ward 7, but we can see several other wards here as well. And these are -- this is such a close zoom that each dot represents one individual.

The dotted red line corresponds to the boundary of a VTD that is ward 7. But the other VTD boundaries are in solid red, but they are a little -- they are a little thinner. Another thing that's worth seeing here -- and this might be kind of useful more generally is that the very light gray lines are the block boundaries. So this is one map where I was zoomed in enough that I thought it made sense to show the block boundaries. So it's -- they are a little difficult to see, but it hope it communicates just how small are the census block. And so when we are splitting a VTD and moving blocks around, those are the [222] building blocks. They are very some very tiny units that, in a town like this, can contain very few people, very small number of people.

And so what we see in this --

Q So let me stop you there and ask you another question. Hopewell ward 7 was split in the process here of drawing this map; is that right?

A Yes. So it's a little hard to look at so let me explain. The black boundary moves right along the ward 7 boundary to the east. So we see that the VTD is not split as we move along the east. And that ward boundary actually corresponds rather well to a dividing line between African-Americans and whites.

And that remains the case until we get down over to the west side of ward 7.

And then when we get there, we see that instead of following the VTD boundary, which would have -- which would have placed an African-American neighborhood into District 62 and would have removed it from 63, there was -- there was kind of a -- the line that dips up in towards 7 and extracts that African-American neighborhood and places it into District 63.

Q And that -- okay. So the African-American --

JUDGE PAYNE: Excuse me, Mr. Hamilton. Is ward 7 is the same thing as the VTD?

[223] THE WITNESS: Yes. In the city of Hopewell, the ward -- these wards are used at VTDs. And that's the case in a couple of other spots as well.

Q So if you wanted to -- well, let's strike that. Let me ask first, so the African-American neighborhood that is inside this little box here that was carved out, the VTD was split in a way to move that neighborhood into House District 69 -- House District -- whichever one we're on?

A Sixty-three.

Q Sixty-three; is that right?

A Yes.

Q And when you said a little while ago when you were describing the split of this city of Hopewell, you said it was a little bit more precise in the drawing of HB 5005. Is this what you were referring to?

A Yeah. What I was referring to is the fact that Hopewell was -- back when it was in District 74, it was

also divided. But I don't believe it was -- it was -- I don't believe there were VTD splits along the way. Q So this is sort of a fine tuning of that split to make it even more starkly sorted between the white areas and the black areas; is that right?

A Yes.

Q Now, maybe this is a good place to revisit our discussion about political information below the VTD [224] level. If you -- if you -- if we're looking at the district as a whole, this ward 7 as a whole, you wouldn't know where the democrats live versus where the republicans live within that ward, at least not from census data?

A No. If I wanted to take out a knife and cut out the democrats and I only had the VTD level political information perhaps transferred down to the blocks, I wouldn't know where to cut unless I used race as a proxy for party. That's the only way I would be able to do that.

Q So let's just pause on that for a moment. Putting aside the question of whether that would be legally permissible or not, it would be possible to use -- because you do have race information at the census block level; is that right?

A It's one of the only things we have at the census block level. So those information are collected by the census department for the purpose of redistricting. But we don't have much else at the level.

Q So it would be possible to use race as a proxy -- putting aside, again, the legality, whether it's legal or not, but it's possible to use race as a proxy for politics?

A Yes.

Q I won't ask you the legal question because I think [225] Mr. Braden will object about whether that's legal or not.

Let me ask you this. Couldn't this VTD have just been split to equalize population? I think Mr. Braden said these were all done at the end and every one of them -- virtually every one of them was just done to equalize population.

A Well, I've drawn a lot of maps. I've done a lot of redistricting myself. And, indeed, when we have a tight population target, as we had in the House of Delegates in Virginia, at the end, after one moves around the VTDs and has the architecture, one is often off by a little bit of population. And that could be the case on two sides of a boundary. We can have two places that are a little bit off. So --

Q But my question is --

JUDGE PAYNE: That may be interesting, but it didn't respond to the question. Would you please just listen. Ask the question. Just answer the question, if you would, sir.

Q Isn't it possible that this VTD was split in this way to equalize population? Yes or no.

A It seems very unlikely for me for the reasons that I was trying to explain.

JUDGE PAYNE: The question was is it possible. That was the first question. In your view, yes or no, is [226] it possible?

THE WITNESS: I would have to go with impossible.

JUDGE PAYNE: Impossible.

A Exceptionally unlikely.

Q Okay. And if we look at the screen, I've drawn a line to kind of lop off the end that kind of dips down to the south, you could draw a line there to split the VTD, right?

A You could draw the line in any number of places. That's why I went with impossible. I had to think for a moment.

Q And maybe this is just obvious, but in the line where I drew it, it's the white population that's being moved into House District 63, right?

A Yes.

Q And in the line where the map drawers drew it, it's a black population?

A Yes.

Q And we could draw the line sort of like that and get a little bit by both if we wanted to, right?

A Yes. The number of ways we could do it gets to be very large very fast.

Q And the point is when you're trying to equalize population, the color of one's skin doesn't matter, right? [227] A No, it does not.

Q Because one person is one person for equalizing population?

A Yes.

Q Thank you. Let me -- let me just back up here as we leave the Richmond area and ask, for all of the districts around Richmond that we've been discussing in this entire region, did the legislature miss any majority black VTDs?

A No. All of the majority African-American VTDs are either wholly within or partly within one of the challenged districts in this region.

Q All right. Thank you. Let's move to the second area that I think you talked about, region. The Tidewater region; is that right?

A Yes.

Q And that's covered in your report starting on page 41. What districts are located in the Tidewater?

A Here we have Districts 92 and 95, which are in the Virginia peninsula, and then we have Districts 80, 89, 90 and 77 in South Hampton Roads.

Q All right. And the slide on page 41 of the illustrative exhibit, this is the area with just the racial data overlaid over the top of the entire region?

A Yes.

Q Okay. Let's turn to the next slide, which is on page [228] 42 of the illustrative exhibit. It's Figure 13 on -- from your report. This is the Tidewater benchmark districts; is that right?

A Yes.

Q And then the next slide on page 43, this is the Tidewater districts in HB 5005; is that right?

A Yes.

Q So if we go back and forth, we can see the changes here?

A Yes.

Q So 45 and -- page 45 and page 44 are probably the best contrast between these two. Fairly dramatic changes in this area, right?

A Yeah. The things that are really noticeable, I think, are -- perhaps three that are most noticeable. We see that large arm that comes out of 95 and follows the African-American population up Warwick Boulevard. We see that there had been an African-American population kind of the southern terminus of the bridge, starting right here, that had not yet been brought into one of the challenged districts, and it was brought into 80. And then we see again a little bit of expansion into the -- associated with African-American suburbanization to the east. So we see 90 expand its boundaries out and follow the African-American population a little bit more closely. [229] And there were some changes in District 77 as well.

Q All right. Let's take a look first at House Districts 92 and 95. I believe you covered these two districts together in your report; is that right?

A Yes.

Q And why did you do that?

A These two districts are intimately connected. It's hard to understand the districting decisions of one without thinking about the implications for the other when it comes to both population and the 55 percent aspiration.

Q All right. Delegate Ward was the incumbent in District 92?

A Yes.

Q And Delegate BaCote was the incumbent in District 95?

A Yes.

Q So let me direct your attention to Figure 15 on page 45 of your report, which is illustrative exhibit page 47. This is the districts after redistricting, with an overlay of the benchmark maps for House Districts 95 and 92; is that right?

A Yes.

Q Let's take a quick look through the same series of maps starting on page 48 of the illustrative exhibit. This is the area of Districts 95 and 92; is that right?

A Yes.

[230] Q And then if we go to the next slide, page 49 of the illustrative exhibit, this shows the racial distribution of the population in the area?

A Yes.

Q And then the next slide, page 50, shows the benchmarks?

A Yes.

Q And the next one shows the adopted plan; is that right?

A Yes.

Q So here's one more. If we flip back and forth between the benchmark and the adopted plan, we can see some pretty significant changes here; is that right?

A Yes. The main changes involve adding arm to 95, moving some precincts from 95 to 92, and then some fine tuning on the eastern side of 92.

Q Can you describe the population and racial composition of these two districts at the time of the redistricting?

A The 92 benchmark population was 71,000. So it needed to gain 9000 people. Ninety-five benchmark population was 68,000. So it needed to gain even more people to get up to 80,000. But both of them had a very large African-American voting age population at the beginning. They both had 60 percent. Ninety-two had a bit more than [231] 60 percent.

Q So -- so 95 was underpopulated by about 12,000 people; is that right?

A Yes.

Q And 92 was underpopulated by about 9000 people; is that right?

A Yes.

Q Okay. So let's start with Newport News and Hampton. Can you describe how the map dealt with that area?

A Yes. The challenge here was to add population and then again, the -- in the immediate surrounding of the benchmark districts, we see there's not a lot of African-American population; that if we use traditional redistricting principles and we try to keep some compactness and contiguity, we would have trouble with the African-American voting population would fall rather quickly if we had that many individuals.

So the -- the solution to that seems to have been to bring some African-American population from 95 into 92 and then avoiding the need to -- to move District 92 further out into its surrounding areas. And then the -- then 95 was able to -- to add African-American population by moving up to the north and including that long arm.

Q Okay. So this is the northern arm extending District 95 sort of to the northwest; is that right?

[232] A Yes.

Q So maybe we can take a look at Figure 16 from page 47 of your report. It's the next page. It's page 56 of the illustrative exhibits. What are we looking at here?

A This is simply the northern tip of that arm.

Q Okay. And there are four VTDs here, Jenkins, Denbigh, Epes and Reservoir. Do you see that?

A Yes.

Q Let me ask you first. Was any of this area in the benchmark map at all?

A No. This was not part of any of the challenged districts before.

Q So all the lines that we see here -- the reason we don't see any blue lines here is because there wasn't no benchmark lines up here in this district?

A Correct.

Q All right. How did the map treat these four VTDs?

A Well, each of these VTDs was split somewhere near the middle. But I think it's clear to see from the map that they were -- they were rather explicitly split along racial lines.

Q So maybe we can walk through Denbigh, the -- let's see. The very -- the southern most VTD is Jenkins; is that right.

A Yes. It has a funny shape. It starts over here, but [233] it continues all the way over to the other side.

Q So there's a line that divides the eastern side of Jenkins from the western side of Jenkins; is that right?

A Yes.

Q And it's a relatively straight line?

A Yes.

Q And to the east -- at the risk of just stating the obvious, it pretty neatly follows exactly where the residential pattern is between black and white; is that right?

A Yes.

Q And then we go up a little bit further. The next VTD is Denbigh. Do you see that one?

A Yes.

Q And how is that VTD split?

A Initially, it's following the same major boulevard, which was Warwick, but then it kind of jogs off to the west a bit.

Q Okay. And then the next one up is -- at least as I'm pronouncing it, Epes, which might be wrong for which I apologize. How does it treat Epes?

A Again, we see a rather stark divide between the African-American neighborhood, which, on the east side of the boundary, contains a lot of multifamily houses and apartment complexes that have large African-American [234] populations. And on the west side of that boundary are more single-family homes that have a greater percentage of white population.

Q Did you examine this area in some detail --

A Yes.

Q -- in preparing your -- and what did you find?

A Well, I found that the line kind of moves away from a major boulevard and it starts to follow a lot of residential streets and simply follows behind the apartment complexes. So it keeps the apartment complexes inside of 95 and keeps the neighborhoods on the other sides of these streets outside of 95.

JUDGE PAYNE: I'm having trouble following what you're saying about Epes. As I understand it, Epes ends at the right-hand side of the dark line that's there at an angle, and across the road over there is another VTD. That's -- is that right or wrong?

THE WITNESS: Well, I'll circle the boundary of the -- of the Epes VTD.

JUDGE PAYNE: Yeah. So I'm having trouble understanding where you're saying there's a racial divide. It looks like it's -- it's kind of generally gray in that whole area, all of Epes, and the only area that is lighter is across the road, which is in another VTD called -- I can't read it. And I'm --

[235] MR. HAMILTON: I think you're thinking of Nelson.

THE WITNESS: I'm speaking of the west side of this boundary.

JUDGE PAYNE: Well, where is the racial divide inside of Epes? Draw it on there and let me see what you're saying and then I can understand it.

There's a big lake there. Isn't that where the lake is the reservoir?

THE WITNESS: That's the gray part you see. There's no people there because there's a reservoir.

JUDGE PAYNE: I know exactly where it is. I'm trying to -- and I've been in the area. I'm trying to understand where you're saying the divide is.

MR. HAMILTON: He's dawn --

JUDGE PAYNE: Draw with you finger where you think the racial divide is in there.

THE WITNESS: I've drawn it with red dots along the section of this VTD that is split. So that's the split of the VTD.

MR. HAMILTON: And for the record --

JUDGE PAYNE: Originally, Epes went down to the Nelson line. Is that what you're saying?

THE WITNESS: Yes. The Epes VTD extends to the Nelson line.

[236] JUDGE PAYNE: Originally.

THE WITNESS: The VTD is the VTD. It -- this -- what happens is the electron administrators now have to print separate ballots for people who come to vote at this precinct.

JUDGE PAYNE: That's not what I'm asking you.

THE WITNESS: It's still --

JUDGE PAYNE: The black line is the end of the Epes line as it stands now in your number 56. Is that correct or incorrect?

THE WITNESS: The Epes VTD extends all the way to the red line that separates --

JUDGE PAYNE: To the Nelson line?

THE WITNESS: Yes. But the District 95 cuts through and slices the Epes VTD at the point of that line.

JUDGE PAYNE: Okay. I understand.

Q So maybe I can help establish the record here. The little dots that you drew, it's the black line that separates Epes, that splits the VTD. It goes from right at the southern part of the Epes border and follows that thick black line to the north until it jogs just a little bit west and then -- and then stops there; is that right?

A Yes.

Q And to the east is the African-American part of Epes; is that right?

[237] A Yes.

Q And to the west, there's a -- is a white or Caucasian part of Epes?

A Yes.

Q And the border of the Epes VTD is on the far side of the white population where it bumps into the Nelson or borders the Nelson VTD; is that right?

A Yes.

Q So the split that we're talking about is that split right between there; is that right?

A Yes.

Q And that is a division between white population and black population, at least according to the United States Census data?

A Yes.

JUDGE PAYNE: Wait a minute. Excuse me. Your view is that where the line of 95 cuts through that VTD, that the left part of the Epes, which is down to Nelson, is all white?

THE WITNESS: No. I don't -- I believe --

JUDGE PAYNE: That's what the answer was. You didn't mean that, though, did you? It's mixed.

THE WITNESS: Oh, I certainly didn't mean that it's all white. It's --

JUDGE PAYNE: It's predominately white.

[238] THE WITNESS: Yes. Thank you, Your Honor.

JUDGE PAYNE: I think it's better to be precise in the question and the answer because the record would be wrong that you just made if you did it the way you did it. All right.

MR. HAMILTON: Thank you, Your Honor. I stand corrected.

Q So Epes was split so that the predominately African-American side was to the east and the predominately Caucasian side was to the west; is that right?

A Yes.

Q And you testified it went -- okay. So then continuing north from there, it follows the Reservoir border, the southern part of the Reservoir border up, and then divides the Reservoir VTD as well; is that right?

A Yes. And I'm adding -- I was adding some red dots there.

Q Okay.

A But this said divide is -- that's the line of the divide for the Reservoir VTD.

Q And the Reservoir VTD to the north is more predominately African-American; is that right?

A Yes.

Q And to the southern part of the Reservoir VTD is the [239] predominately white portion of the VTD; is that right?

A Yes.

Q Okay.

JUDGE PAYNE: Do you have a way -- take the Reservoir VTD that you just talked about. Do you have a way of quantifying what -- the number of black dots and the number of white dots in the area that you're calling the predominately black section and the number of white dots and the number of black dots in the area that you're calling the predominately white section?

THE WITNESS: Dr. Palmer has the precise information in his report. So I don't have those numbers in front of me, but I believe that will -- that will be -- that testimony will follow mine.

MR. HAMILTON: I think there's an analysis of the split VTDs. I'm not certain of that. I'll have to check during the break, but I think there may be an analysis of the comparative numbers here.

Q So same question. Couldn't these two VTDs have been split this way just to achieve population equality between the two districts?

A Again, when we're trying to achieve population equality between two districts, we don't need to split multiple VTDs in this way. So the answer is no.

Q And for -- if it were done for political reasons, [240] other than using race as a proxy for politics, would there be any other way of determining the political composition at the census block level?

A No.

Q Okay.

JUDGE PAYNE: Is this a convenient place to take a break?

MR. HAMILTON: It is, Your Honor.

JUDGE PAYNE: All right. We'll take 20-minute afternoon recess.

(Recess taken.)

[241] JUDGE PAYNE: All right, sir. Do you have enough water over there, Dr. Rodden?

THE WITNESS: I think so. I've got two glasses.

JUDGE PAYNE: We're going to take one away.

MR. HAMILTON: That will be another problem. May I proceed, Your Honor?

JUDGE PAYNE: Yes.

Q Sir, I want to clarify one thing. We had this discussion about where the dividing lines of the Epes VTD at the northern end of House District 95 was. On page 56 of the illustrative exhibit, which is figure 16, page 47 of your report, when we look at the Epes VTD, the district boundary created by House Bill 5005 for HD 95 is denoted by the heavy black line; correct?

A Yes.

Q And the underlying VTD boundary, in this case Epes, is demarked with a narrow red line; is that right?

A Yes.

Q Then there are places where the two overlap, and, of course, you can't see the red line because the black line is obscuring it; is that right?

A Yes.

Q Thank you. I just wanted to make sure that was clear for the record. You mentioned earlier in your testimony the transfer of African Americans from District 95 to 92? Where [242] did that happen?

A There were VTDs called Mallory, Forrest, and Kraft, and those were moved from District 95 to 92.

Q Okay. Were they densely populated?

A Yes.

Q And together, these three VTDs, Mallory, Forrest, and Kraft, how many African-American voting-age population -- or how many African-American population, put aside voting-age, did that include?

A Yes. It increased the population, including African-American population, by 8,000. So just with the moves of those VTDs, it was possible to approximate the population threshold.

Q And then the voting-age population is something slightly less than that, about 6,200; is that right?

A Yes.

Q So if District 92 needed population -- maybe we can go back to the earlier combined map. Illustrative Exhibit 47, this is your figure 15 on page 45 of your report, discuss just looking at this, if District 92 needed population, how would one add population

without regard to race but respecting more traditional redistricting criteria? What other options were there?

A We see the way District 92 had been drawn before, there was a strip of -- along the coast to the -- on the far east [243] side of this map that was excluded from the districts. So there was a little strip, and so it seems that a way to increase population, while also enhancing the compactness of the districts in the area, would be to simply bring the district boundary over and include that coastal strip.

Q So if we want to compare the benchmark to the HB 5005 in the way that House District 92 has changed, we would look at Illustrative Exhibit 50 and 51 -- is that right? -- showing the benchmark, and then the House Bill 5005, that might be an easier way to look at it, at least on the screen here.

JUDGE PAYNE: 50 and 51?

MR. HAMILTON: That's right, Your Honor. 50 is the benchmark. 51 is the districts as adopted in the 5005.

Q This area, this coastal sliver you were just talking about, is it right there on the side of that appendage sticking out in your Hampton?

A Yes. That's just one area that is noticeable that it seems traditional redistricting principles would involve. Not creating that little tentacle coming down from the district above.

Q Anywhere else?

A Seems like it might have also been straightforward to straighten out this line, you know, do some things like that, and all of these moves,

though, given the existing lines, they would have brought in white population from the surroundings.

[244] Q Let me ask you this: If we look at the construction of these two districts, 95 and 92, is this an area where the 55 percent black voting-age population target constrained the map drawers in a significant way?

A It constrained them to some extent, but certainly I think it almost goes without saying that when the final numbers are 60.7 and 60 percent, then there were many different ways to achieve the 55 percent target. And, in fact, these districts ended up with an African-American voting-age population five percent higher than that.

So it is certainly not the case that every one of these little squibbles we're looking at is somehow crucial to the achievement of the 55 percent target.

Q Let's take a closer look at this eastern side of House District 92. If I can direct your attention to figure 17 on page 50 of your report, and I think we have a slightly clearer image on page 54 of the illustrative exhibit, 54, which is this eastern appendage. Can you describe what we're looking at here?

A This is just the eastern appendage we were just looking at of House District 92, the enacted version. Black line is the district boundary.

Q And can you describe -- we don't have one that, an illustrative exhibit that shows the benchmark. Can you describe some of the changes that were made to form these [245] boundaries in this area from the benchmark to 5005.

A I believe the Phoebus VTD to the southeast, kind of near the bottom of the map, that had been in the district before, and it was removed. And there was a small section up in the northeast that was --

Q Small section of the Ashbury?

A Somewhere up there. There was a section that was moved.

Q How do the lines, as selected, correspond to the African-American and white communities in this area?

A Again, I think the -- this is one of those situations where the VTD boundaries themselves are roughly at the border between where the population transitions from being more African American to more white and that the maps just highlight that this is an area where that transition is relatively stark.

Q I suppose you mean some of the VTD lines in this area demark the lines between the African Americans and the white population; correct?

A That's right. There is some VTDs --

THE COURT: Predominantly, is that what you meant?

MR. HAMILTON: That's what I meant, Your Honor. I apologize.

A There's some VTDs where achieving a finer division would have required VTD splits, and those were not pursued.

Q For example, the Serna VTD, I think that's what this is -- Syms. Sorry, Syms VTD just sort of in the center of the map. [246] The northern boundary of that doesn't correspond with a division between

predominantly white and predominantly black population areas; correct?

A Correct.

Q That wasn't chosen?

A No.

Q Instead, they chose the northern boundary of the Smith VTD and the, looks like Keycogan (phonetic) VTD and the Jones VTD in order to draw the boundary of this northern extension; is that right?

A Yes.

Q Those align precisely with the division between the predominantly African American and predominantly white areas; correct?

A Yes.

Q And what about if we move to the western side of the district, this VTD Tyler, was that in the benchmark like this?

A Yes, I believe it was.

Q And how does that align -- so I gather -- let me stop and ask first, did the legislature choose to keep that Tyler VTD in House District 92 or move it?

A It was kept.

Q How does the boundaries of that VTD align with the demarcation line between the predominantly African-American portions of the district and the predominantly white portions [247] of the district?

A The northern part of that line creates a rather sharp divide. On the eastern side of that little extension, the African-American population does spill over a bit into the surrounding VTD.

Q What net effect did the changes have -- the changes drawn on HD 92 have on the district?

JUDGE PAYNE: On 92?

MR. HAMILTON: On 92, yes.

A The African-American voting-age population stayed roughly similar. It fell a bit, but it was -- the most important change was the move in from -- of some of those VTDs on the west from 95 to 92.

Q Now, in this Court's original memorandum opinion, the Court suggested that in drawing Districts 95 and 92, the legislature had passed by, quote, areas that have more black voters, close quote. Were there any significant areas -- rather were there any areas with significant predominantly African-American population that were passed by in this area?

A There are kind of isolated pockets within VTDs of African Americans, but there are no majority African-American VTDs that could have been added in this area.

Q Why is that? Had HB 5005 already pulled in the vast majority of VTDs with majority African-American population?

A In the area around the cities, certainly, but not in that [248] area that reached up to the north in 95 that we looked at.

Q And how did House Bill 5005 treat that area to the north?

A It created an extension that, from the maps, I think it's clear that it brought in a large number of African Americans.

Q Let's turn to House District 80, if we might. Let me direct your attention to figure 18 on page 53 of your report. This is page five of the illustrative -- 58 of the illustrative exhibit. This is House District 80; is that right?

A Yes.

Q So if we click through a few slides here, illustrative exhibit page 59 is just the straight VTDs of the area; is that right?

A Yes.

Q Page 60 is the racial data overlaid; is that right?

A Yes.

Q 61 is the benchmark?

A Yes.

Q And page 62 of the illustrative exhibit is the final bill; is that correct?

A Yes.

Q So if we go back and forth between page 61 and 62, we can see the changes that were made here; is that right?

A Yes. The clearest changes, just on first glance, are the extension to the west, to those African-American VTDs to the west that had not previously been included in the challenged [249] district, and there was a loss of the Berkley VTD on the east and some other changes on the east as well.

Q Can you describe the population and racial composition of House District 80 at the time of the redistricting?

A This is another one of those urban districts that had lost relative population. So it was -- started with 70,500 population roughly. So it needed to gain roughly 9,500 people, and it started with an African-American voting-age population that was below 55 percent. So it was 54.4 percent.

Q What's the issue? If we were to look at the benchmark and understand that we need to add 9,000 people to this district, what's the challenge?

A It's a similar problem to what we saw in some of the Richmond urban districts, that it is surrounded by whites and it is surrounded by African Americans who are already in African-American majority districts that if they would lose them, they might run into trouble with the 55 percent threshold.

So in this situation, it was necessary to be careful about which VTDs were added and to find a way to bring up the population substantially without bringing in too much white population relative to African-American population.

Q All right. So we know from looking at the map how they solved this problem which is going off to the west, picking up VTDs marked 33, 34, 38, Taylor Road, Yeates, Harbor View. Was [250] that significant to your analysis here, that extension out to the west, and if so, why?

A That made it possible to add African-American population without taking population from any of the other districts that were very close to the threshold.

Q Now, in the prior trial, there was some discussion about whether this was an incumbent protection effort. Did you examine that proposition?

A I didn't fully understand the proposition, but I couldn't find a way in which that would work.

Q So the suggestion was that Delegate Joannou, the delegate in District 79 just to the north wouldn't have -- he was -- he wouldn't have wanted to move -- to have District 80 expand, say, for example, into VTD 30, 22, 23, 24, 25, that sort of middle area right in the dead center of the map.

JUDGE PAYNE: Mr. Hamilton, how can he know what Delegate Joannou wanted?

MR. HAMILTON: I'm not asking him what Delegate Joannou --

JUDGE PAYNE: You said he wouldn't want it.

MR. HAMILTON: Say again?

JUDGE PAYNE: You said, I thought, he wouldn't want that.

MR. HAMILTON: I said I was repeating testimony from the earlier trial. I'll ask another question, Your Honor.

[251] Q Is it plausible -- did you examine whether it would be -- that would have, in fact, offered protection for Delegate Joannou, if you know?

A I looked at the precinct level, results of primaries, and general elections that had occurred previously.

Q What did that reveal?

A That was a strong -- the neighborhoods that he lost were strong neighborhoods for him, and there seems to be -- he eventually lost in a primary to an individual who had a base that was in a neighborhood that was to the east, and he lost his seat.

Q That was after the redistricting?

A Right after redistricting, yes.

Q Did you examine whether it was an incumbent protection or could have been drawn this way to protect Delegate Matthew James?

A Yes, I considered that.

Q What did you conclude?

A It was hard for me, as a political scientist, to see how that would work since he lost some of the neighborhoods in which he had received really strong support in the past, especially on the east side of the district.

Q Which VTD is that?

A Berkley in particular.

Q And do you recall what -- in his last contested election, [252] how Delegate James faired in 2009 in the Berkley VTD?

A He received 96 percent of the vote there.

Q Thank you. This extension, the westward extension, did that create an additional river crossing, water crossing?

A Yes.

Q Can you point out where that is? There was already one water crossing here?

A Yes, over -- there was already a water crossing here.

Q And one of the other changes in this district is this eastern segment -- I'll just circle it -- to the north, Taylor Elementary School, Old Dominion. Are those largely predominantly white VTDs?

A Yes.

Q And those were removed from House District 80 in the redistricting; is that right?

A Yes.

Q And then out to the west, these areas that we've just been talking about, Yeates, Taylor Road, 38, are those, by comparison, more heavily African-American populations there?

A Yes.

Q Thank you. Let's cross the river to the north and look at HD 89, and if I can direct your attention to figure 19 on page 56 of your report which is page 64 on the illustrative exhibit. The incumbent here was Delegate Alexander?

A Yes.

[253] Q If we click through a few slides quickly, first one is the area for District 89; is that right?

A Yes.

Q Page 65, and then the next one on page 66 of the illustrative exhibit is the population density overlaid?

A Yes.

Q And then the next one on page 67 of the illustrative exhibit is the benchmark?

A Yes.

Q The next page, 68, is the final adopted plan; is that right?

A Yes.

Q So we can flip back and forth, and we can see the changes that were made here between the benchmark and the final plan; is that right?

A Yes. So here we see, above all -- I believe this was also discussed earlier today -- the eastward extension of 89 to take some VTDs from 90, some African-American VTDs down there to the south and also the extension across the river to Berkley. That's on the southern side. Then we see some changes in fine-tuning to the boundaries over on the north as well.

Q Can you describe the population and racial composition of this district at the time of the redistricting?

A This was, again, an urban district that needed population. So it needed almost 6,000 additional population, and this was, [254] perhaps, the biggest problem in the region for the 55 percent BVAP target, because it started at 52.5 percent. So it's below the target, and it needs to add substantial population.

Q So how did it add that population?

A It added population in a few different spots, and I just went over some of them briefly. But it added those VTDs that came from 90, those heavily African-American VTDs to the south, and it --

Q Let's see here. Let's start with the northern part of the district. There is a VTD of Rosemont; do you see that in the very north?

JUDGE PAYNE: It's hard to read.

MR. HAMILTON: It is. I agree with that, Your Honor. I'll circle it on the screen to make it obvious for the record. It's sort of the northeastern corner of the district outlined by the black line.

Q Rosemont was in the benchmark to begin with; is that right?

A Yes.

Q And it's heavily or predominantly African-American population?

A Yes.

Q And then what's the next VTD to the west? Is that Suburban Park?

A Suburban Park, yes.

[255] Q Was that in the benchmark House District 89?

A Yes, it was.

Q What's the racial composition of Suburban Park?

A It's predominantly white.

Q And that was carved out?

A Yes.

Q Then we move one more VTD to the west. The next one is Granby; is that right?

A Yes.

Q And was the Granby VTD split?

A Yes, it was.

Q I think we have a closer image of that split. Figure 20 in your report, page 58, it's on page 69 of the illustrative exhibit. This is a close-up of these two VTDs, Suburban Park and Granby?

A Yes.

Q There was -- we have this strange shaped pipe in the Granby precinct; do you see that?

A Yes.

Q Can you describe -- this is a split of this VTD; is that right?

A Yes.

Q So the district line, again, the district line is this black line that goes through the middle that forms this sort of pipe area?

[256] A Yes.

Q And where is the outer edges of the Granby precinct?

A They're right here.

Q All right. So the black line splits the top half of the Granby precinct. Can you describe how that split is effectuated?

A As the split comes up Granby -- well, this district boundary, the VTD boundary, both of those come up Granby Avenue sort of like this, and then we see while the VTD continues up, the boundary then shifts this way and kind of goes -- takes an abrupt upward turn and then kind of comes back again right to the south of a group of dense apartment complexes and comes up again and --

Q For the record, because the court reporter can't take down the little dots on the screen, you've outlined on the screen some little dots that outline this pipe-shaped figure that forms the split of the Granby VTD right in the center; is that correct?

A Yes.

Q Now, is it possible that this line just happened to be drawn this way for the purposes of balancing population and this is just a coincidence it skirts right

around to carve out this relatively predominantly white area out of the center of the VTD?

A It seems very unlikely.

[257] Q Delegate Jones testified at trial in 2015 that this appendage was added to District 89 in order to include a funeral home owned by Delegate Alexander that was located right in the middle of that pipe. Let me ask you, did you examine that proposition?

A I examined the location of the funeral home just to see where it was.

Q Did you find the website for Delegate Alexander's funeral homes?

A Yes.

Q Is there a funeral home in the Granby VTD?

A It is on the other side of the street in the Suburban Park VTD.

Q So let me ask the question again. Is there a funeral home owned by Delegate Alexander in the pipe in the Granby precinct?

A No.

Q And you mentioned that there is a funeral home in the Suburban Park VTD; did I hear you correctly?

A Yes.

Q Have you marked that on figure 20, page 58 of your report with a black dot?

A Yes.

Q And that's in the Suburban Park VTD?

A Yes.

Q And you labeled it Metropolitan Funeral Home or Funeral [258] Service?

A Yes.

Q So had Delegate Jones wanted to keep Delegate Alexander's funeral home in his district, what would he have had to do?

A The easiest thing would have been just to have kept the Suburban Park VTD in the district.

Q Because it was already in the district.

A Yes.

Q At the risk of asking a stupid question, was it necessary for Delegate Jones to draw this pipe-shaped figure in Granby to include the funeral home?

A No.

Q By the way, for the record, what is the specific street address for Delegate Alexander's funeral home?

A 7246 Granby Street, Norfolk, Virginia.

Q That's included in your report; is that right?

A Yes.

Q And the funeral home, that funeral home actually ended up being drawn into what district?

A I believe that's District 100.

Q Couldn't he have just confused the name of the street with the name of the neighboring VTD?

A That's possible.

Q And if he confused the two, would he have drawn the map the way it was drawn here? Is that possible?

[259] A Well, no. The funeral home is not in the part of the district where the pipe is -- was drawn.

JUDGE PAYNE: Where is the funeral home? You said page 58, but that didn't relate to House District 89.

MR. HAMILTON: In the illustrative exhibit, Your Honor, it's on page 69. In his report, his expert report, which is Plaintiff's Exhibit 69, it's on page 58.

JUDGE PAYNE: So it's to the east of Granby Avenue.

MR. HAMILTON: Correct. Suburban Park, yeah.

JUDGE PAYNE: And south of -- what are you calling that; a pike or a pipe?

MR. HAMILTON: A pipe, p-i-p-e. I think that's the way it was referred to in the memorandum opinion, but I'm not sure.

Q Was it difficult to find the address of this funeral home?

A No.

Q How did you do it?

A Just found it on the internet.

Q Approximately how long did it take?

A 30 seconds.

Q Does Delegate Alexander have other funeral homes?

A I believe so.

Q Where else?

A One is on Berkley Avenue in Norfolk, and that's in the Berkley VTD as well. And there is one on Portsmouth Boulevard [260] in Portsmouth.

Q So the location in Portsmouth was never, at any time, in House District 89; is that right?

A I believe that's right.

Q It wasn't in the benchmark.

A Right.

Q Wasn't in the adopted plan.

A Correct.

Q The one in Berkley VTD was not in the benchmark District 89; is that right?

A That's correct.

Q But it did end up in the district in the adopted plan.

A That's correct.

Q But it required adding a river crossing to get there?

A Yes.

Q And stripping the Berkley precinct out of District 80; is that right?

A Yes.

Q And the third location was in Suburban Park. That one was in the benchmark District 89; is that right?

A Yes.

Q But was taken out by Delegate Jones in -- or by the House Bill 5005; correct?

A Correct.

Q Let's turn our attention to District 90.

[261] MR. HAMILTON: Your Honors, this is illustrative exhibit page 70.

Q District 90 is in the South Hampton Roads area; is that right?

A Yes.

Q I can turn your attention to page 17 of the illustrative exhibit, figure 21, page 59 of your report. The incumbent here was Delegate Howell; is that right?

A Yes, that's right.

Q So maybe we can get click through these slides quickly. Page 27 of the illustrative exhibit is the VTDs. Page 37 is the VTDs with the racial data superimposed on top. Page 47 is the benchmark, and page 75 is the final map; is that right?

A That's right.

Q So if we go back and forth, we can see how this map changed from the benchmark to the final adopted map; is that right?

A Yes.

Q Can you describe for the Court the population and racial composition of this district at the time of redistricting?

A Yes. This is another urban district that was short of population. It started out -- the benchmark district was 71,000 people, so it needed to add 9,000, and the African-American voting-age population at the beginning was 56.9 percent.

[262] Q So let's start on the eastern edge of this district. What happened here?

A On the eastern edge, the district simply expanded outward, out to the east. It included some new VTDs that had not been there before.

MR. HAMILTON: And I think we have a blowup of this area on page 77 of the illustrative exhibit. It's, for the record, page 77 in the illustrative exhibit and figure 22, page 60 of his report.

Q This is a close-up of this area; is that right?

A Yes.

Q And were VTDs split in this area?

A Yes. In this image, the Shell VTD was split as well as the Aragona VTD.

Q And if we look at the outer edge before we get to the split VTDs, this whole outer edge was drawn by HB 5005; correct?

A That's right.

Q The blue line is the old benchmark district that appears in this figure; is that right?

A Correct.

Q So how was -- let's start with Shell. How was the Shell VTD split?

A We can see the movement of the black line through the Shell VTD, and it was split in such a way as to keep the -- the [263] part of Shell that had a relatively large African-American population, relative to the east side, was kept in the district, and then the eastern part where there was a relatively larger white population was kept out of the district.

Q And how about the Aragona VTD, you said that one was split as well?

A Yes.

Q How was that split?

A We can see that the split is on the far east there. The Aragona VTD continues all the way through -- off the area covered by the map, and it's a largely -- largely predominantly white area in the rest of the VTD off to the right, and the area to the west of the line is predominantly African American.

Q Let's take a look at the southern part -- close-up of the southern part of the district now. This is, of the illustrative exhibit, page 76. In his report, it's page 61, figure 23. So this is a close-up of the southern part of the district; is that right?

A Yes.

Q Can you describe what this tells us, what we can learn from this?

A Some of this was discussed earlier today, but there is population to the west in this figure that was dropped from the district, and the district developed this tentacle over here to [264] the south that crossed the river and brought in the VTDs of Sherry Park, College Park, and then part of the Reon VTD.

Q Was the Reon VTD split?

A Yes, it was.

Q How was that split?

A We can see that the line dips down and around and back up again and that that dip does correspond to -- a neighborhood that has a condominium complex that is predominantly white that is seems to be carved out of the district and kept in the surrounding district.

Q Was this line added as part of HB 5005, or did it exist in the benchmark as well?

A It was added as part of HB 5005.

Q And did it have the effect of sorting the predominantly white areas from the predominantly African-American areas?

A Yes.

Q Is that consistent with the pattern you've seen elsewhere in the plan?

A Yes, very similar to the other VTD splits we've been looking at.

Q Do the lines in District 90 reflect attention to race?

A Yes.

Q And how so?

A Well, District 90 in general, as I believe I described -- and it might be helpful to zoom back out to the overall --

[265] Q That would be page 17 of the illustrative exhibit, figure 21, page 59 of the report. That one?

A Yes. So there were VTDs to the immediate west that were moved over to the District 89 to help District 89 increase its African-American voting-age population, and then there were VTDs that -- the VTDs we've been discussing over to the east which were predominantly African American that were added, and then there was some white VTDs to the southwest that were moved over to District 77.

Q All right. Let's move to District 77 then, a little bit to the west. If I can turn your attention to figure 24 on page 63 of your report. That's the illustrative exhibit at page 79. The incumbent here was Delegate Spruill?

A Yes.

Q And we can click through some maps quickly here. Page 80 is the base area. 81 is the area with the population distribution and race information. 82 is the benchmark map, and 83 is the final map. So if we go back and forth between page 82 and 83, we can see the changes that were made; is that right?

A Yes.

Q Can you describe the changes that were made?

A Some of them have already been described. There were a number of predominantly white VTDs that had been in the districts we were just discussing, District 90, that were moved [266] over to 77, and then we see that along the long strip -- this is a district that I think is fairly clear is designed to combine African-American populations in Chesapeake and Suffolk. The line that the strip that reaches over to Suffolk changed in a number of places. And then there were some changes out in the west, in the Suffolk area as well.

Q Can you describe the racial and population composition of this district at the time of redistricting?

A Yes. District 77 had an overall population of almost 77,000, so it only needed to gain -- it needed to gain some population but not as much as some of the other districts. And it had an African-American voting-age population of around 57 and a half percent. So it was just a bit over the target.

Q Let's take a closer look at the east end of this district. It's page 84 of the illustrative exhibit, figure 25 on page 64 of your report. This is a close-up of the eastern edge; is that right?

A Yes.

Q So let's focus on these four VTDs, Oaklette, Tanglewood, Norfolk Highlands, and Indian River. What were the combined voting-age population of those four VTDs?

A The combined voting-age population of 11,231.

Q Of those, how many were African Americans?

A 3,169.

Q So predominantly a white population in this area?

[267] A Yes.

Q And those were added to House District 77?

A Yes. They were removed from District 90 and moved over to 77.

Q And what effect did that have on House District 90?

A In and of itself, it pushed the African-American voting-age population down by bringing in a large number of white population.

Q And how did that interact with the racial -- or with the effort to reach -- if it did at all, the effort to reach the 55 percent black voting-age population in these two districts, 90 and 77?

A If there aren't some compensating moves elsewhere, then it creates the danger of falling below the threshold. Q So what was happening here between these two districts?

A Population moved from 90, it has helped district 90 reach the target, and then in District 77, it was necessary to make some compensating moves.

Q So this is a transfer of a large number of white voting-age population from 90 to 77 in order to facilitate the achievement of 55 percent black voting-age population in both; is that fair?

A It's possible. There are other ways to have achieved that, but that's the effect that this change had.

Q Now, in this Court's original memorandum opinion, the [268] Court commented that some of the changes reunited the old city of South Norfolk. Do you recall that observation?

A Yes.

Q And did you examine it?

A Yes.

Q And what did you find?

A I simply looked for boundaries of the old city of South Norfolk, and it largely corresponded to some parts -- some VTDs that were already in, and by including Johnson Park, that would have had the effect of unifying the old city of South --

Q Let me stop. You say that would have had the effect. Was there another change that counteracted that?

A The VTD called Westover was also part of the old city of South Norwalk (sic), and that removed.

Q What's the racial composition of Westover VTD?

A The African-American voting-age population was 11.5 percent.

Q How does that compare to the black voting-age population of Johnson Park?

A Johnson Park was 41.5 percent.

Q So, in the end, after adding Johnson Park and removing Westover, was the city of South -- old city of South Norfolk reunited or not?

A Not according to the boundaries I've been able to find.

Q So it continued to be split, just in a different way?

[269] A Yes.

Q So after adding the four largely white VTDs on the eastern edge of the district, that's Oaklette, Tanglewood, Norfolk Highlands, and Indian River, didn't that have an impact on the racial composition of District 77 by pushing down the BVAP levels in that district?

A Yes.

Q So how did District 77 deal with that?

A It ended up removing a number of majority white VTDs.

Q Where are those?

A One I just mentioned is Westover, and I'll circle it. It's down here to the south. There's another one called River Walk which is down here. There's another one named Geneva Park here. There's another one over here called E.W. Chittum School.

Q So this is -- so, what's -- what do those four VTDs have in common?

A These are all majority white VTDs.

Q Why was it necessary to remove those VTDs after the addition of the four largely white VTDs in the east?

A Again, it was necessary to reach the target and adding a lot of white VTDs without removing some white VTDs would lead to -- would lead to the BVAP falling below the 55 percent target.

MR. BRADEN: Your Honor, I think I object to that [270] appears as why. He's obviously speculating on why something if so. My objection is straightforward. It's why is speculation on the reason, the motives, the decision-making is not describing what happened.

JUDGE PAYNE: Mr. Hamilton.

MR. HAMILTON: I'm not asking about the motives. He obviously has no knowledge --

JUDGE PAYNE: But he did talk about why, and why is a question of motive, and he can talk about effect, but he can't talk about somebody's process.

MR. HAMILTON: Fair enough. I'll rephrase the question.

JUDGE PAYNE: Objection sustained.

MR. HAMILTON: Thank you.

Q Let me ask you this then: After adding these four VTDs that were largely white on to the east that -- I think you testified that drove down the black voting-age population in the district as a whole; is that correct?

A Yes.

Q As a matter of math, without asking you for anybody's motive, how would you get the black voting-

age population up? I suppose there's two options here. What's one of them?

A One option is to remove white VTDs.

Q What's the other option?

A To add African-American VTDs.

[271] Q Which option does the map reflect?

A In this section of the map, we're looking at the removal of some white VTDs.

Q Thank you. So let's look at the center one here, Geneva Park. Geneva Park was in the benchmark; is that correct?

A Yes.

Q I'm just going to erase these circles from the screen here so we can see it a little more clearly. That created a little narrow corridor just to the north of Geneva Park; do you see that?

A Yes.

Q How wide is that?

A About half a mile.

Q Are there any roads through there?

A No.

Q If you wanted to get through there, you'd have to park your car and walk if you wanted to stay in the district?

A Yes, or bike --

JUDGE PAYNE: Excuse me. I'm lost about where you are going from where to where that there's no road.

MR. HAMILTON: If you are going from VTD St. Julian's -- well, just traveling. Traversing the district from the east to the west, you have -- and if you're going to stay in the district, you have to go right through that narrow corridor. I'll just circle it on the screen, but it's the junction [272] between St. Julians, and then to the west, I can't read it. Just to the east of St. Julians. Do you see that? That's about a half mile; is that what you said, sir?

A Yes.

Q You said it's a -- I think you testified there's no roads there through.

A No.

Q So you had to walk or ride a bike or ride a horse if you're going to go through that and stay in the district?

A Yes.

JUDGE PAYNE: I still am lost. Part of St. Julians, Fourteen and Five, for example, have no population. There's a reason for that. The question -- you are talking about walking from where; in Geneva Park through St. Julians?

MR. HAMILTON: No, Your Honor. Geneva Park is no longer in the district.

JUDGE PAYNE: So where are you talking about walking from where to where --

MR. HAMILTON: From St. Julians headed west trying to stay within the district.

JUDGE PAYNE: There are no roads, you're saying, in -- to the left, and that is -- I can't read it. I have to turn back and find out what it is.

MR. HAMILTON: If you stood at the border of St. Julians and started marching west, you'd find no roads to walk [273] through.

Q Is that right, sir?

A That's my understanding.

JUDGE PAYNE: Where is the map? 77, it shows just what the precincts are so you can read what they are?

MR. HAMILTON: I think there's one in Intervenors' Exhibit 94. I don't know what page it is.

JUDGE PAYNE: There isn't one in this book?

MR. HAMILTON: In this book that you are looking at, Your Honor, the two maps that -- you might find useful are page 83.

JUDGE PAYNE: It doesn't have any names.

MR. HAMILTON: It won't have the names, no, I'm sorry, Your Honor.

JUDGE PAYNE: Okay. So you are walk from St. Julians where the populated area is across to the one that begins -- the one next to it that begins with a C; okay?

MR. HAMILTON: That's correct.

JUDGE PAYNE: There are no roads there, okay.

Q Were there any split VTDs in this area, sir?

A The split VTDs in this district were further to the west.

Q Okay. So let's look at page 85 in the illustrative exhibit book which is figure 26 on page 68 of your report. Which two VTDs were split in this area?

A John F. Kennedy VTD, and the other one is, I believe, [274] called Lakeside.

Q And can you describe how they were split.

A We see -- I will mark the JFK split there and the Lakeside there, and it largely corresponds to the pattern we've seen elsewhere where the VTD splits facilitate the division of African Americans in the district, and the parts of the VTD that are relatively -- have relatively smaller African-American populations are outside the district.

Q So this is consistent with the pattern we've seen elsewhere where either the VTD choice or the split of a VTD separates or falls along the line demarking the difference between the predominantly African-American portion and the predominantly white portion; is that right?

A Yes.

Q Just a couple more questions, and we'll wrap up. Did your analysis reveal stark splits in the racial composition of populations moved in and out of these 12 House districts?

A Yes, I did. I believe the maps help shed light on that.

Q And did your analysis reveal stark splits in the racial composition of populations moved in and out of split counties?

A Yes.

Q How about split cities?

A Yes.

Q And how about the selection of which VTDs to include within a district and outside a district?

[275] A Yes.

Q Did your analysis reveal stark splits in the racial composition of populations moved in and out of these districts as displayed in the VTD splits?

A Yes.

Q In your professional opinion, was the rate the predominant consideration in these 11 House of Delegates districts?

A Yes.

Q Can you explain that?

A Yes. I started with the 55 percent target, and I explored the ways in which that target shaped the decisions about which VTDs had to go in and out of the various districts and examined the ways in those movements of VTDs in and out of districts often contrasted with or ran into conflict with traditional redistricting principles.

I then noticed that there were often stark splits between African Americans and whites at the lines that formed the district boundaries and noticed that looking at -- whether I was looking at counties' VTDs or splits within VTDs, that those stark racial divisions kept reappearing in my analysis. And all of that led me to the conclusion that race was the predominant factor in drawing these districts.

MR. HAMILTON: Thank you, Dr. Rodden. No further questions.

JUDGE PAYNE: All right. I'll tell you what we'll [276] do. We'll stop for the evening and start at 9:00 in the morning. That will give you a chance to hone your cross-examination down. You need to -- you all filed

yesterday a notice that you outlined at the beginning of the proceedings about what designated discovery you had agreed upon. Have you delivered to the judges two copies of those?

MR. HAMILTON: I don't believe so.

THE COURT: Would you sometime before --

MR. HAMILTON: Of course.

JUDGE PAYNE: I turn to you because I know who is going to do it. What is your name?

MR. HAMILTON: This is Trish Marino, Your Honor.

JUDGE PAYNE: We know who is going to do that. Thank you very much. We'll be in adjournment. See you in the morning.

(End of proceedings.)

Transcript of Bench Trial, *Bethune-Hill v. Va. State Board of Education* (Oct. 11, 2017)

[279] THE CLERK: Day two. Case No. 314-cv-852.

Golden Bethune-Hill, et al. v. The Virginia State Board of Elections, et al. and the Virginia House of Delegates, et al.

The defendants are—the plaintiffs are represented by Kevin Hamilton, Abha Khanna and Aria Branch.

The Virginia State Board of Elections is represented by Matthew McGuire.

The Virginia House of Delegates is represented by Amy Tolbert, Mark Braden, Katherine McKnight and Richard Raile.

Are counsel ready to proceed?

MR. HAMILTON: We are, Your Honor.

MR. BRADEN: Yes, Your Honor.

JUDGE PAYNE: All right. Dr. Rodden, I remind you you're under the same oath which you took yesterday, sir.

THE WITNESS: Yes. Thank you.

JUDGE PAYNE: Mr. Braden.

CROSS-EXAMINATION

BY MR. BRADEN:

Q. Good morning.

A. Good morning.

Q. In drawing your report, did you construct a complete map of Virginia House districts?

[280] A. No.

Q. So without a complete map of Virginia House districts, how can you be confident about the suggested changes that you make and have recommended to the State of Virginia and its plan?

A. I don't believe I recommended any changes to the plan in my report.

JUDGE PAYNE: Are you talking about the changes that Mr. Hamilton was—drew red lines on some of the exhibits yesterday or are you talking about something in his report?

MR. BRADEN: Well, yeah, in his report.

JUDGE PAYNE: All right. Well, he answered that. He said he didn't make any recommendations.

MR. BRADEN: Didn't make any.

JUDGE PAYNE: I'm sorry to interrupt.

BY MR. BRADEN:

Q. What regions are the challenged districts in?

A. Well, in my report, I treated the regions of Richmond and tri-cities, I considered that to be a region because the districts all touched one another. And then I also considered the Tidewater region as one region even though it kind of covers a large area.

Q. And is it true that there are no challenged districts in Northern Virginia?

[281] A. That's correct.

Q. And no challenged districts in the Valley?

A. Correct.

Q. No challenged districts in the Piedmont?

A. Correct.

Q. And no challenged districts in Southwest Virginia?

A. Correct.

Q. So it's safe to say the districts are not scattered across the Commonwealth?

A. The challenged districts are not scattered, correct.

Q. Okay. Have you ever worked in the Tidewater/Hampton

Roads area?

A. No.

Q. Ever visited the area?

A. Yes.

Q. As a tourist?

A. Yes.

Q. Have you ever been in Richmond before?

A. Yes. I've been here for work.

Q. And what work were you doing?

A. I was testifying in this courtroom in the Lee case.

Q. But you've never lived in Richmond?

A. No.

Q. Okay. And the Lee case, was it a redistricting case?

A No.

[282] Q It was a voter ID case?

A. Yes.

Q. And you testified for the side that lost?

A. Yes.

Q. Did you have a chance to visit The Fan when you were here?

A. Yes.

Q. Did you get a chance to visit the Robin Inn?

A. I still have not had the opportunity.

Q. You didn't happen to see the Loupassi realty signs when you were there, did you?

A. No, I did not.

Q. If we could—

MR. BRADEN: If we could bring up Plaintiffs' Exhibit 16.

BY MR. BRADEN:

Q. Dr. Rodden, have you seen this document before?

A. Yes, I have.

Q. And can you tell us what it is?

A. This is the House committee on Privileges and Elections Committee of Resolution No. 1, which is the House of Delegates district criteria. And this was from 2011.

Q. And did you review this document before you wrote your report?

[283] A. Yes.

Q. And did it inform your report writing?

A. Yes.

Q. And can you see on it the range of population of the deviation in Roman numeral I?

A. Yes.

Q. And can you tell the Court what that is?

A. This is laying out the rules for population equity. And it tells us that the population deviation in the House of Delegates districts should be within plus or minus 1 percent.

Q. And is that a—an unusually small range for deviation in legislative plans?

A. It's—it's a relatively small range, yes.

Q. Have you seen plans with a smaller range of deviation for legislative plans?

A. No.

Q. Would this population range necessitate the division of—when you're drawing a plan, would it necessitate drawing parts of the plan at the census block level rather than the VTD level?

A. It will usually be necessary to split one VTD in a district. Q And that would be split between the district and an enjoining district?

[284] A. Yes. And so if it enjoined another district, it might be necessary to split another VTD to equalize population in that district.

Q. So if a district adjoined three or four VTDs, it's conceivable you might have to split three or four VTDs?

A. It's conceivable.

Q. Do you know, in Virginia, how often vote tabulation districts, or VTDs, are changed?

A. It's been—it's been some time. They have been stable in Virginia for—for a bit longer than is the case in some places.

Q. Do you know how many have changed since the adoption of the plan?

A. Since the adoption of HB 5005?

Q. Yes.

A. I don't know. I don't know offhand.

Q. And what are vote tabulation—VTDs?

A. Well, we speak of VTDs in a generic way across states as a vote tabulation district. It is a—it is—it often corresponds to a precinct, but it is the lowest unit at which votes are tabulated.

JUDGE PAYNE: But in this case, a VTD is a precinct, correct?

THE WITNESS: Yes. There was a decision made to combine those two—I believe at the time going back to [285] the 2001 redistricting. And they have been—we can speak of them interchangeably in Virginia.

BY MR. BRADEN:

Q. And they are principally or exclusively administrative?

A. Yes. I think that's a good description.

Q. Let me go to—skip down to Roman numeral—I have to see which Roman numeral it is here. Roman numeral III. And can you tell the Court what that talks about?

A. This refers to contiguity and compactness. So districts shall be comprised of contiguous territory, including adjoining insular territory, and contiguity by water is sufficient.

Q. Am I correct that in your report on a number of occasions you question whether or not districts are contiguous?

A. I don't believe I questioned whether the districts were contiguous. All of the districts abide by this Roman numeral III in Virginia.

Q. And you don't remember in 77, in your section, talking about 77, whether you questioned whether the district was contiguous?

A. I didn't question whether it was contiguous. I believe I characterized it as having a contiguity problem in the sense that it was a very narrow strip. But I [286] didn't—I wasn't claiming that it was unconstitutional, or anything like that.

JUDGE PAYNE: Excuse me. You mean House District 77?

MR. BRADEN: House District 77. Excuse me. My apology.

Q. And did you read any of these cases before writing your report?

A. No. I'm familiar with the subject matter of the cases, but I did not read the case, the decisions.

Q. Okay. Your report contains a series of dot density maps. Do you know whether they have ever been used by a state legislature in drawing a plan?

A. No, I don't.

Q. Do you know whether they have been used by any municipality drawing a plan?

A. No, I don't.

Q. And you also discuss, at various—couple of occasions, school board boundaries. Do you know

whether or not Virginia had school board boundaries in its data set that they used for redistricting?

A. No, I don't.

Q. And you don't know of any state that uses these types of maps, to the best of your knowledge?

A. The school board boundaries?

[287] Q. School board boundaries, yes.

A. In drawing House districts?

Q. In drawing House districts.

A. I don't know.

JUDGE PAYNE: Are you saying you don't know or you don't know of any that do? Do you understand the distinction I'm drawing?

THE WITNESS: Yes. I don't think I know either. I'm not sure—it's conceivable to me that as a matter of election administration simplicity, it would be desirable to—

JUDGE PAYNE: Excuse me.

THE WITNESS: Yeah.

JUDGE PAYNE: I'm saying do you know whether any state uses these dot density maps for any purpose?

THE WITNESS: He was asking me about school board boundaries.

JUDGE PAYNE: I know. But I'm asking you—you answered an earlier question. I'm asking you quite a broader question. Do you know whether any state uses these dot density maps for any purpose? And then we'll go into what purpose.

THE WITNESS: No. Drawing districts usually involves sitting down with Maptitude and moving

around census blocks. I don't think anyone would be visualizing [288] these kinds of dot density maps during that process.

JUDGE PAYNE: All right.

THE WITNESS: Hopefully that clarifies it.

JUDGE PAYNE: Yes. Thank you very much.

Q And I'd like to go to Plaintiffs' Exhibit 69. And, Dr. Rodden, you recognize this as your report, your initial report?

A. Yes.

Q. And if we could turn to page 11. And if we can look at the first paragraph on that page.

JUDGE PAYNE: It begins "However," or the first full paragraph?

MR. BRADEN: First full paragraph that begins with "However."

A. "However, on the north side of Richmond in particular, the racial target necessitates splitting African-American neighborhoods to avoid drawing a district where the black voting age population is too high, since those [289] African-Americans are needed to bolster the black voting age populations in other districts that unavoidably contain too many urban whites."

Q. What would be too high of a black voting age population?

A. What I'm referring to here is the necessity of achieving six 55 percent districts. So if too many of the African-Americans are concentrated in one or two districts, there will not be enough in the Richmond

region to produce a 55 percent district, especially District 71.

So "too high" means that if one of the districts has too many African-Americans concentrated in it and there aren't enough left for District 71, that would cause District 71 to fall below the threshold.

Q. Could you tell the Court some specific number that would be too high?

A. I haven't calculated that number. It would depend a lot on the configuration of the districts as we're drawing them.

Q. Should the state have a concern about too high of a black voting age population in the district?

A. That's not the point I was making. I don't have—don't have an opinion on that.

Q. You've written and testified on political gerrymandering cases, am I not correct?

A. That's correct.

Q. And you're familiar generally with techniques used in gerrymandering, correct?

A. Yes.

Q. Is packing one of the traditional gerrymandering techniques?

A. Yes.

[290] Q. And can you tell the Court what that technique is?

A. It involves trying to draw districts such that one's opponent is overwhelmingly concentrated in a small number of districts so that one's party has a

more efficient distribution of support across the remaining districts.

Q. And is this a concept of packing used in the context of partisan gerrymandering also applicable in the context of racial gerrymandering in vote dilution cases?

A. One could apply it that way, yes.

Q. So if a district had too high of a black voting age population, might it not be vulnerable to a vote dilution case?

A. That's not something I discussed in my report. It's not something I evaluated here.

Q. I don't think I was asking you whether you discussed it in your report. You say you're an expert on redistricting and you've testified about racial gerrymandering. So I'm simply asking you a straightforward question as to whether you have the knowledge in the area to answer?

MR. HAMILTON: Object to the form of the question, Your Honor. It calls for a legal conclusion. He's asking him would it be vulnerable to this kind of a legal claim. He's not a lawyer and he's not offered as a lawyer. So I object to the form of the question.

[291] JUDGE PAYNE: Overruled.

A So the question is whether I am aware of a threshold at which courts would recognize African-Americans as being too concentrated which would then open them up to a vote dilution challenge?

JUDGE PAYNE: Dr. Rodden, wait just a minute.

If that's your question, say yes.

BY MR. BRADEN:

Q Yes. I can—

JUDGE PAYNE: If not, then tell him.

MR. BRADEN: That's close enough, Your Honor. I would love to have him answer it.

JUDGE PAYNE: All right. Go ahead then, sir.

A Well, this does seem to ask for a legal conclusion that I'm not in a good position to offer. But if—if an inner region or say we're drawing some school board elections or city council elections and all of the minority group is concentrated into one district, say, out of four, then that would potentially open up that jurisdiction to a vote dilution challenge.

Q And you were, in fact, an expert witness in Ferguson dealing with exactly that issue, correct?

A No. That was—that was an at-large district that was being challenged. It was an at-large school board election in a setting where African-Americans and whites [292] were relatively geographically dispersed. In that report, I created dot density maps to try to show to the Court that the racial groups were dispersed and that the introduction of single-member districts would—would not improve the representation of African-Americans, that—

JUDGE PAYNE: Was the claim in that—I think his question is was the claim in that case a packing case?

THE WITNESS: Not at all.

JUDGE PAYNE: It was not?

THE WITNESS: No.

JUDGE PAYNE: So you did not opine on that topic?

THE WITNESS: No.

JUDGE PAYNE: Okay.

Q. Let me move to the next paragraph. It begins, "It is not possible." Could you just read that real quickly to the Court?

A. "It is not possible to draw the five districts that meet the 55 percent target without including the African-American section of Hopewell. It must be linked in either a noncompact district that reaches all the way to Richmond or it must be linked with Petersburg."

[293] Q. Have you seen a map showing that that statement is not true?

A. No.

Q. Have you seen any map attempting to show that that statement is not true?

A. Perhaps. There was an exhibit that was distributed, but I haven't been able to examine that.

JUDGE PAYNE: Before you go further, in the second sentence of that paragraph, in two places you use the indefinite pronoun it. What is the "it" in that sentence?

THE WITNESS: I'm speaking to—about the Hopewell area.

JUDGE PAYNE: You're talking about just—it means Hopewell? In other words, I would substitute Hopewell must be linked in either a noncompact distinct that reaches all the way to Richmond or Hopewell must be linked with Petersburg? Is that the way to read the sentence?

THE WITNESS: Yes.

JUDGE PAYNE: All right. Thank you.

Q. If that statement—if that paragraph is not true, and demonstratively not true, does that call into question the rest of your report?

A. No, not at all. The 55 percent target is only the beginning of my—of my analysis. I try to understand the ways in which the 55 percent target constrains the redistricting process. But if, even in spite of going [294] beyond the 55 percent target, there was still evidence of stark racial sorting that wasn't even required to reach the 55 percent target, I believe that only strengths the conclusion in my report that race predominated in the drawing of the districts.

Q. So if this statement is not true, it really doesn't have any effect on the credibility of your report. Is that what you're saying?

A. I don't believe so.

Q. So would you say the Courts can safely ignore this paragraph?

A. No, that's not the claim either.

Q. If we can go down to the next paragraph and simply the first sentence, can you read that to the Court?

A. "The 2001 benchmark plan already reflected an attempt to draw African-American voters in the majority black districts."

Q. Do you know whether or not the 1991 plan reflected an attempt to draw African-American voters in majority black districts?

A. I did not examine the 1991 plan.

Q. Do you know whether the 2011 plan was an effort to attempt to draw black—African-American voters in black majority districts?

A. Yes.

[295] Q. Are the 1991, 2001 and 2011 plans, black districts, significantly the same?

A. I have not examined the 1991 plan. I think we've established, everyone has agreed, that the 2001 plan, the starting point was the existing districts. And the effort was made to update those districts so as to reach the 55 percent target. I don't think there's any dispute about that.

Q. Or were they updated because of the requirements of the new census data?

A. The two goals were population equity and 55 percent African-American voting age population is my understanding.

Q. Is one of the other goals continuity?

A. Continuity is required by the constitution, yes.

Q. No. Continuity.

A. Oh, I'm sorry. It appears that that was a goal, yes.

Q. Does it appear that the plan is a status quo plan?

A. I'm not sure how we would define that. It builds upon the existing districts. It does not start over fresh and begin a new process. It begins with the base of the existing plan, which is a common strategy in redistricting.

Q. There were significant population changes in the new census, correct?

[296] A. Yes.

Q. And did those population changes necessitate significant changes in the map?

A. Yes. As I described, the northeastern part of the state grew. Some of the urban core areas lost population, and there was a general suburbanization taking place in the major metro areas.

Q. Do you know whether districts were transferred from Southside and Tidewater to Northern Virginia?

A. I'm not sure I understand the term "districts were transferred."

JUDGE PAYNE: Let him explain it, then.

Q. I think the—let me pull up an exhibit for that purpose. That would be—I think you have one of the map books there. This would be Defendant-Intervenors' Exhibit 06. And if I could turn you to the page that shows—

MR. HAMILTON: I'm sorry, counsel. Is it Exhibit 6?

MR. BRADEN: Six. Defendant-Intervenors' Exhibit 6, the large map book. I've got the right version of it. Excuse me for just a second.

JUDGE PAYNE: Are you sure it's Exhibit 6?

MR. BRADY: I'm sorry. It's 91.

JUDGE PAYNE: Yeah. That's what I thought.

MR. BRADEN: My apologies. We have some [297] exhibits from the Vesilind case. So if we could go to District Number 10.

JUDGE PAYNE: What page is that?

A. This must not be the right book.

BY MR. BRADEN:

Q. That is on page 21 and 20.

JUDGE PAYNE: Have you got the right exhibit there, Dr. Rodden?

THE WITNESS: Not yet.

JUDGE PAYNE: Okay. Take your time. And you all go off the record and talk and get sorted out what you need.

(Discussion off the record.)

JUDGE PAYNE: Have you verified that you're on the same page and we're all on DIX 91, page 20 and 21?

MR. BRADEN: We were attempting to save a few trees by recycling our exhibits, to some degree.

Q. Dr. Rodden—

MR. HAMILTON: Excuse me. If I could just correct the record. It's pages 19 and 20, I believe, is shown on the electronic screen, and the page—

JUDGE PAYNE: Is that what you're doing is 19 and 20?

MR. BRADEN: Nineteen and 20. House District 10.

[298] MR. HAMILTON: Thank you, Your Honor.

JUDGE PAYNE: Thank you, Mr. Hamilton.

Q. Looking at page 19, do you recognize what that is?

A. Not yet. Do we have a benchmark district and then a—

Q. That's correct. This is the 2001 District 10?

A. That's the top—that's page 19.

Q. The top page. So you don't—you didn't look at that before preparing your report?

A. I looked at a map of the—I did not memorize the locations of all the nonchallenged districts.

Q. Okay. That's House District 10?

A. Yes.

Q. Do you know where that's at in Virginia?

A. This is along the southern border.

Q. And if you can look at page 20, the one below.

A. Yes.

Q. And that's District 10 in the new plan, correct?

A. Yes.

Q. Do you know how far away Loudoun County is from the

Southside/North Carolina border?

A. Not offhand.

Q. Is this district—would it appear to be an example of a full district moving to deal with a population problem?

[299] A. The district with a number 10 is now in a different location. And that's a common occurrence in a redistricting.

Q. And the collapsing of a single district has significant ripple effects on the surrounding districts?

A. Of course. I discuss that in my report.

Q. Yeah. But you weren't aware as to which district got moved in this area?

A. No.

Q. If you could turn to page 173.

JUDGE PAYNE: That's still of Exhibit 91?

MR. BRADEN: Still in Exhibit 91.

Q. Do you see, on page 173, District 87? Do you recognize that from your report?

A. Yes.

Q. Where is that?

A. This is in the Hampton Roads area heading toward Virginia Beach.

Q. And in the HB 5005 on page 174, where does it move to?

A. This moves all the way up into the Fairfax County area. So this was a strategy for dealing with a population gain in the northeastern part of the state.

Q. And were you—before me showing this to you, were you aware of this change?

[300] A. Yes.

Q. So you knew it went up to Fairfax County?

A. Yes.

Q. I didn't happen to see that in your report anywhere. Did you talk about it in your report?

A. No.

Q. And this type of move has ripple effects across other districts?

A. Yes.

Q. I'd like to go back to Plaintiffs' Exhibit 69, your report, page 11. If I could go to the line in the middle

of the paragraph that begins, "The remaining urban Richmond districts." On page 11.

JUDGE PAYNE: It's the next to the last sentence on page 11. Do you see it, Dr. Rodden?

THE WITNESS: Yes.

BY MR. BRADEN:

Q Can you just read to the Court that sentence?

A. "The remaining urban Richmond districts, 69, 70 and 71, were drawn so as to spread African-Americans rather evenly across the three."

Q. Let's stop there. If it was done in an alternative way simply to spread the urban—the African-Americans across two districts, might that not retrogress their ability to elect their candidate of choice?

[301] A. That's not something I addressed in my report.

Q. Do you know the answer to the question?

A. No.

Q. But to get the plan precleared, the legislature would have to know the answer to that question, correct?

A. Yes.

Q. If I could go to your report beginning at page 15.

And on the bottom of page 15 you have a heading called "District 71." There is a heading there in your report on District 71, correct?

A. Yes, there is.

Q. Okay. And is that the section beginning your discussion of District 71?

A. Yes.

Q. And would it be fair to characterize this as a discussion as to why you believe that district was not drafted correctly?

A. At no point in the report do I bring in a concept of what is correct. I don't recommend a particular set of districts. My intention is to simply explain for the Court what kinds of maneuvers were necessary, in this instance, to reach the 55 percent threshold and simply describe those.

Q. So you don't have any professional objection to the way this district was drawn?

[302] A. Professional objection? That seems to require a normative conception of how the district should be drawn, and that's not something I was—I had in my mind in writing the report.

Q. But you are—my understanding, your expertise was in mapping and redistricting, using mapping for redistricting purposes. So are you not able to answer that question?

A. What is the ideal district in 71? No. There are just too many ways of drawing the district. It depends on what we're trying to achieve.

JUDGE PAYNE: Mr. Braden, I think he was offered and found to be as an expert in the following area. Maybe I've gotten it wrong. But if I'm wrong, you tell us. Geo-spacial data analysis and its application to redistricting process, right?

MR. BRADEN: Yes, Your Honor.

JUDGE PAYNE: Okay. That's his expertise.

Q. On page 17, in the middle of the page, middle paragraph, do you see the sentence beginning, "From a perspective of"?

A. Yes. Would you like me to [302] read it?

Q. Yes.

JUDGE PAYNE: You know, I have to tell you, I think all of us are pretty well able to read. So we can read it. If you'll point out the sentence, then you just ask your question. It will save some time maybe.

MR. BRADEN: Yes, Your Honor.

JUDGE PAYNE: Read that sentence to yourself.

He's going to ask you a question.

Okay. Your question, Mr. Braden.

Q So it would have made far more sense to expand a district to the west. Why would it have made for more sense? To who?

A. If the goal is to honor traditional redistricting principles and examine—and make use of city boundaries and connect neighborhoods, this was an option that was available. I describe an alternative approach to the district. It is not my testimony that this is the optimal district. I'm not issuing a normative claim about what optimal redistricting looks like. I'm suggesting another alternative. If one was trying to maximize neighborhood contiguity and the maintenance of city boundaries, this is an option that was available.

Q. I understand it is an option that's available. It seems to me that you made a normative judgment

when you said it made far more sense to expand to the west. Is that not—do I misread what that's saying?

A. From a traditional redistricting principles approach, [304] it makes more sense.

Q. And it makes more sense to unite The Fan and museum neighborhoods in 71?

A. From a perspective of traditional redistricting principles.

Q. Might one change the direction they're looking and think it might make more sense to unite The Fan neighborhood in the museum district in 68?

A. In a district that is—that reaches out to the distant suburbs and kinds of reaches in and carves out a bit of Richmond, it would make that district more heterogeneous. But one might have reasons for wanting to do that, but that's—and that is, in fact, what was done.

JUDGE PAYNE: District 68, if done that way, would be "more heterogeneous" meaning what?

THE WITNESS: So District 68 was a district that includes part of the west—western portion of Richmond and reaches out into—

JUDGE PAYNE: It includes the near West End?

THE WITNESS: Yes.

JUDGE PAYNE: Are you saying that The Fan and the near West End would be more heterogeneous?

THE WITNESS: The district as a whole, which it also contains a large suburban area.

[305] JUDGE PAYNE: The district as a whole, beginning with The Fan and going to the West End of Richmond would be more heterogeneous, in your

judgment, if this change were—if this change were adopted the way you suggest? Just so I understand what you're saying.

THE WITNESS: I want to make sure I understand what you're asking.

JUDGE PAYNE: Well, you're asking—you said it would be more heterogeneous. And first I want to know what would be more heterogeneous, and I thought you said from The Fan to the west. And you took it from The Fan all the way to the West End. That would be The Fan, the museum district, the near West End and the West End. And if that's what you mean, I need to know. I think we need to know that. Are you saying that those would be a heterogeneous district?

THE WITNESS: I was arguing that 68, by taking in more of The Fan, became more heterogeneous.

JUDGE PAYNE: So you really weren't talking about the near West End and the West End?

THE WITNESS: I believe I was.

JUDGE PAYNE: Do you know what I'm talking about when I say "near West End and the West End"?

THE WITNESS: Yes.

JUDGE PAYNE: So are you including the West End [306] and the near West End and the—and the museum district and The Fan in your heterogeneous district?

THE WITNESS: What I was referring to was the status of 68 as a district that is partly a suburban area, it reaches through a corridor out into the suburbs and includes part of the West End, and it extended further into Richmond.

JUDGE PAYNE: That isn't the question. The question is—let me try it another way. And instead of rephrasing the question, just try to answer the one I'm asking even though you may not think it's a good question. When you're talking about a heterogeneous district, are you talking about a district that includes The Fan, the museum district, the near West End and the West End? Yes or no.

THE WITNESS: I would need to look at a map to make sure I understand, but I believe the answer is yes.

JUDGE PAYNE: What, then, makes it heterogeneous, in your judgment, that district, as composed in that fashion?

THE WITNESS: The addition of more of Richmond and a district that is—that is—already straddles Richmond and the suburbs. That was the point I was making.

JUDGE PAYNE: By doing what? By—adding more [307] of Richmond meaning adding what to what?

[THE WITNESS: Really, I was referring—this is—so much of this analysis comes to VTD 207, which is really unusual. But that's the—that's the VTD that I was discussing in this.

JUDGE PAYNE: So what you're saying is that by adding VTD 207, it would have made the district more homogeneous?

THE WITNESS: That by adding 207 to District 68—

JUDGE PAYNE: Yes.

THE WITNESS:—this made District 68 more urban, even though most of the district had been a lower density reaching out to the suburbs. I mean, if we look at a map of 68, it's a suburban district that then comes in and gets a bit of the West End and then now it kind of reaches further into the City of Richmond. And in any estimation, that made it more heterogeneous. That was the point I was trying to make, and I'm sorry if that wasn't clear.

JUDGE PAYNE: I think I understand.

MR. BRADEN: If we could bring up Defendant-Intervenors' Exhibit 94, page 4.

Q. I believe you've seen this map before?

A. Yes.

[308] Q. And so you are familiar with the various coding?

A. Yes.

Q. Let me ask you a couple questions. Do you know whether 113 and 114 are in The Fan?

A. Yes.

Q. 112 and 105?

A. I believe that's getting us beyond the boundary that's typically used.

Q. What's the boundary that's typically used? A It's—my understanding is there's a street that runs—well, I'm not quite sure where the street is.

Q. So you're not actually sure where The Fan ends going that way?

A. I've certainly looked at a neighborhood map in the past. But looking at this map without any streets

on it, it's hard for me to get a bearing for right where that boundary is.

Q. There's a street on there—

A. I see the interstate.

JUDGE PAYNE: There's a street—do you know the street that comes from 503, in that circle, it goes up, jogs to the right and goes straight out to I-95? Do you know the name of that street?

THE WITNESS: I've forgotten.

JUDGE PAYNE: Would it help you if I told you I [309] think it represents the Boulevard? Do you all agree that's what it is, or does anybody know? It looks to me like that's what it is.

THE WITNESS: I believe that is the Boulevard. And I think that is traditionally The Fan—that's the street that cuts from The Fan from the museum district, which is on the other side of the Boulevard.

MR. BRADEN: Your Honor—

JUDGE PAYNE: It's 113 and 114.

THE WITNESS: Yes. The museum is right there in the corner of 114. The northeast corner of 114 is where the museum is located.

JUDGE PAYNE: We have got it fixed now. Go ahead.

THE WITNESS: I think I've got my bearings now.

MR. BRADEN: And if it's useful to the Court, the other map exhibit we have has some greater detail of maps on them. That's—

JUDGE PAYNE: Just go ahead with your question. I think he's oriented now. That's all he was trying to get, and I was trying to help him.

Q Let me put a red dot. Can you tell the Court, do you recognize what that is?

A That is the residential location of Delegate Loupassi.

[310] Q. Would it be fair to characterize that he lives relatively closer to The Fan?

A. Yes.

Q. Do you know what House district he lived in growing up?

A. What House district?

Q. No. What precinct? What area? Did he live in The Fan? Do you know?

A. I don't know his childhood history.

Q. So by moving 207 back to 71, that would split The Fan?

A. In a future redistricting, would moving 207, extending the boundary out to Boulevard, would that split The Fan? I don't see that.

Q. If you moved 207 out of 68, would it not divide The Fan—parts of The Fan, 113 and 114, from other parts of The Fan?

A. I believe you're thinking of a different neighborhood map than I am. My understanding, as we just established, is that Boulevard is the boundary of The Fan neighborhood and that 113 and 114 are typically referred to as the museum district.

Q. Okay. I guess I misunderstood the earlier testimony. So you believe that The Fan ends at 207?

A. I do.

[311] Q. Okay. And you believe by moving 207 into 68, that violated traditional redistricting criteria?

A. If we were to focus on neighborhood—on holding neighborhoods together, if that was the value that we were—we were maximizing, then yes.

Q. Let's go—

JUDGE PAYNE: I think the question was a little broader, as I understood it. I don't know if it was or not, but it sounded to me like the question was in your opinion, does moving VTD 207 into District 68 violate traditional redistricting principles? Was that the question?

MR. BRADEN: Yes, Your Honor.

JUDGE PAYNE: And your answer—

THE WITNESS: The answer was yes.

JUDGE PAYNE: Yes. Okay.

Q. If we can go to page 19. And in the last paragraph—

JUDGE PAYNE: You're talking about Plaintiffs' 69 now?

BY MR. BRADY:

Q. Sixty-nine, your report. I apologize.

JUDGE PAYNE: Page what?

MR. BRADEN: Page 19.

Q. And there's a sentence where you suggest it would be [312] curious if Mr. Loupassi, Delegate Loupassi, a republican, wished to undermine

traditional redistricting criteria by reaching into the heavily democratic City of Richmond. Have you talked to Delegate Loupassi about that part of Richmond?

A. No.

Q. Have you talked with anyone who talked to him about 207?

A. No.

Q. Do you know anything about—I don't know whether this is fair or not, but I think it is. Do you know anything about the family's—Loupassi family's landmark restaurant, Robin Inn?

A. I've learned about it throughout the course of the case. It looks like a nice place.

Q. I would suggest it's a great place.

A. Maybe tonight is the night. We'll see.

Q. You know, I was—I was there on Sunday night. It was great, and I could pick up "Loupassi for Delegate" signs in the lobby. There were a lot of them. Do you know whether—

MR. HAMILTON: Your Honor, I object to the statement. It's not—it's not in the record, and it's not a question to the witness. Improper cross-examination and I ask that it be stricken from the record.

[313] JUDGE PAYNE: It was a gratuitous remark, which probably need not be the—the motion is granted.

MR. HAMILTON: Thank you.

Q. Do you know if there's a Loupassi realty office in 207?

A. I believe there might be a—an apartment building that Delegate Loupassi owns in that VTD. I have not been able to find any information about a real estate office. If there is one, it's not on—it doesn't have a website.

Q. Have you looked at the website for the Robin Inn?

A. Yes, I have.

Q. Do you know, have you discussed with any delegates in Virginia whether or not they have a desire to have their family business in their district?

A. I have not.

Q. Have you discussed it with any elected officials in any legislative chamber?

A. No.

Q. Does that seem like an irrational view by a member wanting to have their business in their district?

A. No.

Q. If we can go to Plaintiffs' Exhibit 69, page 20. If you look at the first full paragraph, you say, "It's simply not plausible that splitting The Fan district would advance his political career."

[314] A. Yes. That was based on examination of precinct-level data.

Q. Do you support any expertise in Virginia politics?

JUDGE PAYNE: He's not qualified in that area, and he can't give opinions in it for you or for the other side.

MR. BRADEN: Would—Your Honor, the reason I asked that question is it seems to be what he's offering right here on page 20. I was hoping that his answer to that question would illuminate it to the Court that he's not qualified to make that statement.

JUDGE PAYNE: All right. Go ahead.

Q. If we could go to page 20.

JUDGE PAYNE: Did you get an answer?

A. Was there a question?

Q. Yes. Do you have any experience in Virginia politics that permits you to offer opinion about it not being plausible that Loupassi's political career would be advanced by having his family businesses in his district?

A. As a political scientist who looks at data and looks at precinct-level data in particular, I have not come across redistricting situations in which incumbents try to put densely populated areas into their district where they are very unpopular.

MR. BRADEN: Your Honor, that did not seem to be [315] responsive to my question.

JUDGE PAYNE: Sustained. Strike the answer. Start again. Do you have any basis for making that statement in the area of expertise that you're qualified in is the only question on the table? The answer is yes or no.

THE WITNESS: I have expertise as a political scientist.

JUDGE PAYNE: You're not qualified as a political scientist. You're qualified in a limited area of geo-spacial mapping. So in the area you've been qualified

in, do you feel like you're qualified to give an opinion as in that sentence; "In short, it is simply not plausible that splitting up The Fan neighborhood would advance Mr. Loupassi's political career." That's the question. The answer is yes or no.

THE WITNESS: I believe I'm qualified to make the statement or I wouldn't have made it, but—if the determination about the area of my expertise is—that's outside of my—that's not outside of my hands. I don't think I can—I can determine what—what—that's for the Court to decide, what is my area of accepted expertise. I believe that as a political scientist who studies precinct level data, I'm comfortable making a comment like that, but—

[316] JUDGE PAYNE: Any further pursuit of that issue?

MR. BRADEN: No, Your Honor.

JUDGE PAYNE: We can deal with it in your briefs as to whether he's qualified to do it, given the expertise he's been qualified for.

MR. BRADEN: Absolutely, Your Honor.

JUDGE PAYNE: There are a lot of statements in the report that go beyond the expertise, which is what I told everybody before; that the Court didn't want anybody to be talking about intent and speculating. And so you confine testimony to the area of your expertise. And you raised it, though, so you asked for it. You got it. And now you may proceed.

MR. BRADY: And I was happy to discover the basis for it.

BY MR. BRADEN:

Q. If we could look on page 20 of that exhibit. And you opine, I would suggest, in exactly the same area, which is pointing out that it would be advantageous—what you believe would be advantageous to Loupassi?

JUDGE PAYNE: Where are you talking about?

Q. The next sentence, "In fact." "In fact, it would have been quite advantageous to Mr. Loupassi if Delegate Jones would have pursued the most obvious strategy for adding voters to District 71: Adding VTD 113 and VTD [317] 114." Do you know whether that was obvious to Loupassi?

A. I believed I was making a really noncontroversial statement about the geography of his support. Whether he had other desires associated with furthering his business interest, I have to admit, that is not something I considered when writing the report. I was speaking purely about from a political reelection standpoint and any other possibilities were not included in that statement.

Q. So a more precise statement might have been only looking at election data and no other possible reasons? You just simply don't have any idea what Loupassi believes is advantageous?

A. That's correct.

Q. And you have no idea what Loupassi asked Delegate Jones to do or not do, right?

A. That's correct.

Q. Adding VTD 113 and 114 to 71, what impact would it have on the black voting age population of that district?

A. It most certainly would have reduced it.

Q. And adding, from Henrico County, the districts that—the precincts that were removed, Summit Court, Hilliard Stratford Hall, what impact would that have had on the black voting age population?

A. To add them back into 71?

Q. Yes.

[318] A. It would reduce the African-American voting age population.

Q. And if you took out Ratcliffe, 604, 701, 702, what would the result be?

A. To reduce—yes.

Q. Do you know what it would be reduced to?

A. It would depend on what other decisions were made. You mean specifically reducing those VTDs?

Q. Yes.

A. It would depend on what decisions were made to make up for those to achieve population equity. But it would have lowered it below the starting point of 46 percent.

Q. And do you know how low it would have gotten?

A. No. I haven't performed that calculation.

Q. And that would be a fact important to the state to know, correct?

A. Yes.

Q. Because it would be required to provide that information to the Department of Justice, right?

A. Yes.

Q. Do you have any estimate as to how low it would go?

A. No.

Q. What other black areas could they have gone to that would have kept the number higher?

A. There were other VTDs in District 74 that could have [319] been extracted. I think they would have made perhaps less sense. There are more VTDs in the northern part of the turret of District 70 that could have been extracted.

The point of my argument which I—or of my claim in that section was that some VTDs had to move, and it seems that we're in agreement on that; that some African-American VTDs had to move in order to achieve the 55 percent target.

Q. Does considering race alone make race predominant in drawing a plan?

A. No. Race is predominant in a plan when race explains the drawing of the districts beyond other factors. Race is the most important factor in drawing the districts. That's when we see predominance.

When race is more important than neighborhood continuity, city contiguity, observing county boundaries observing VTD boundaries, when we see a pattern like that, that's when we see predominance.

JUDGE PAYNE: Mr. Braden, it would be a good idea to remember to keep control of the examination. That question could have been answered with a yes or a no and nothing else.

And, Dr. Rodden, if you would keep please that—if somebody else wants to know it, they'll follow up on redirect.

[320] Go ahead, Mr. Braden. And you step down and keep your examination moving along, please.

Q. Okay. I'd like to go plaintiffs' exhibit page 22.

JUDGE PAYNE: That's Exhibit 69?

MR. BRADEN: Exhibit 69, 22, Figure 5.

Q. And can you just tell us again what that figure shows?

A. That shows VTD 505, and it shows the boundary of the enacted plan.

Q. And am I correct, you believe that that shows some intent to move significant numbers of—to impact the racial composition of that area? Let me put it that way.

A. This is an example of a VTD split that—in a district that was very close to the 55 percent threshold. And without this VTD split, the numbers for both District 69 and 71, in terms of the 55 percent threshold, would have been thrown off. But I assume there are other ways, there are other moves that could have been made to achieve the same thing.

Q. Did you review the testimony of Delegate Jones on this particular split?

A. I may have. I can't remember.

Q. Did you view the—any video of his speech on the floor?

A. No.

[321] Q. If I were to represent to you that city officials specifically came to him to—for this particular split, would that indicate to you that possibly it was done at their request? Was this split down at their request? Do you know?

A. It's possible. I have no—I have no reason to believe otherwise.

Q. So that would certainly not be a post hoc justification in any way if Delegate Jones said I did it at the request of Virginia Richmond city officials?

JUDGE PAYNE: That's not in his area of expertise. Come on.

Q. Let me go to page 26 of your report. The last paragraph talks about District 69 straddling the James River in a way that crosses city council ward boundaries, boundaries of elementary, middle and high schools. Any reason to believe the state was aware of that fact when they drew this plan?

A. No. I don't have information about that.

Q. You don't know whether it was in the redistricting database?

A. I do not.

Q. Do you know whether there was any testimony objecting to this?

A. No.

[322] Q. Let me move to page 31 and Figure 4. What's Figure 4?

A. I believe it's Figure 8.

Q. Oh, Figure 8. Sorry. District 74 on page 31.

A. It's a map of District 74.

MR. BRADEN: Okay. Can we bring up the exhibit of the three districts, three versions of 74? And this is Defendant-Intervenors' Exhibit 14 and page 60.

Q. Do you recognize this exhibit?

A. Yes. I've seen this before.

Q. And can you tell the Court basically what it is?

A. It's a time series map of District 74 boundaries in 1991, 2001 and 2011.

Q. And is it—would you characterize these districts as relatively the same?

A. Well, as I've testified before, we see the city of Hopewell moves—was in—in 1991, was not part of the district. It then joins a district in 2001 and then is removed again from the district in 2011.

Charles City County, the African-American part of Charles City County up to the border, looks the same. And there was, in each of these cases, a—an arm that reaches up into the African-American community of Henrico and connects them with the Charles City County rural community. And that—that structure was retained in [323] each of these districts.

Q. So if someone testified that the basic—the principal reason for this was continuity, would you dispute that?

A The basic reason for every decision of the district?

Q. Yeah. The 2011 plan appears to be very similar to the two earlier ones. Someone comes in and says, Yes, I drew this plan very similar and that was my intent, my principal intent, would that statement be true?

A. I believe so.

Q. Do you—the largest difference between 2001 and 2011 is?

JUDGE PAYNE: Is that a fill in the blank question?

Q. The most significant change between 2001 and 2011? Maybe Hopewell?

A. I went through this in some detail yesterday. There were also changes made. The Ratcliffe VTD was moved.

Q. Excuse me. I asked you whether or not that was the largest change. So if you could respond to that, that would be great.

A. In terms of population numbers, I'm not sure. But it's that one visually is the most noticeable.

Q. Do you know whether there was—that was—that particular configuration in 2001 was subject to [324] litigation?

A. I did not know at the time of my report. I have subsequently learned that.

Q. And you understood that that was one of the significant pieces in that litigation?

A. I don't know how important it was in the litigation.

Q. Do you know about whether there was any testimony at any of the hearings objecting to that split?

A. I don't know.

MR. HAMILTON: Object to the form, Your Honor. He's not being offered—it's beyond his area of expertise. Now he's being examined on a record in a different lawsuit.

JUDGE PAYNE: Any objection in that lawsuit or in the plan here on—

MR. BRADEN: Excuse me, Your Honor. I meant in the record. We had a variety of hearings around the state.

JUDGE PAYNE: You're talking about this redistricting?

MR. BRADEN: This redistricting.

JUDGE PAYNE: All right. Then reframe your question, because I think Mr. Hamilton is correct. It could be misunderstood to relate to the prior litigation.

MR. BRADEN: Yes, Your Honor.

[325] Q. I did not mean it in the context of the prior litigation. I am aware that you had not—were not familiar with that prior to drafting your report. I am asking you, though, in the context of this present litigation, whether you are aware of any objections to this river crossing that was discussed in the whole process of—

A. I was not aware of that.

Q. And do you know whether this is the—part of the tidal estuary of the James River?

A. Yes, it is.

Q. But does the tidal estuary extend up to Richmond?

A. No.

Q. Okay. If we could go to the plaintiffs illustrative exhibits. Well, before we do that, let's—excuse me. Let's go to page 34, Figure 10 in Plaintiffs' Exhibit 69. Page 34, Figure 10. What district is that?

A. District 63.

Q. And this is your dot density map?

A. Yes.

Q. Okay. So we have created a demonstrative combing three exhibits. So I'd like to bring that up now, if I can.

JUDGE PAYNE: Are you now talking about the illustrative exhibits?

[326] MR. BRADEN: Yes. Well, we have a separate demonstrative that we've created.

JUDGE PAYNE: All right.

MR. BRADEN: Which consists of three—we've actually got a poster board on that, because I knew that it might be difficult to see.

JUDGE PAYNE: Do you need an easel?

MR. BRADEN: Yep.

Q. And while we're putting it up, let me just ask, Dr. Rodden, whether he can recognize the two maps? Do you recognize where they are from?

A. Yes. I currently can't see the table at the bottom.

Q. Yeah. I understand. We were concerned about that, and that's one of the reasons why we had that. So Figure 11 is your dot density map?

A. Yes.

Q. And Plaintiffs-Intervenors' Exhibit 91 is the same area simply in a different format without dots?

A. I believe so.

Q. And at the bottom there are, from Palmer's report, three—from page 52, Table 1 of his report, some data on these districts?

A. Okay.

Q. These split VTDs.

A. Okay.

[327] Q. So let me ask the question of you have in your report a number of dot density maps where you've gone down to the block level showing simply split VTDs?

A. Yes.

Q. Do you remember how many of those you have?

A. No.

Q. How did you decide which split VTDs to show in your examples?

A. I don't recall. I was kind of working interactively with the GIS software and zoomed in on the VTD splits that—that I could see and I selected some.

Q. Did you select the ones that were the most important to illustrate to the Court?

A. I don't think so.

Q. So you randomly selected them?

A. More or less.

Q. You didn't select them because they appeared to fit your notion of racial sorting?

A. No. I think I tried to—I tried to choose some that had significant population on both sides. There were some VTD splits that had very little in the way of population on one side, and there were some that had no population. There were a couple VTD splits that just, as we saw in—we haven't seen any examples of that yet, but there are somewhere there's just empty space on the other [328] side.

Q. And you did talk, in your earlier testimony, about many of these split VTDs involving sort of surgical precision—did I misquote you?—in the dividing up of the communities?

A. Some of them do.

Q. Okay. Going to your map, I've dotted in red, what does your dot density map tell me about those census blocks?

A. There are some after African-American census blocks up there by the river, south side of the river, just outside of the Hopewell city boundary.

Q. And do you know, if you look on the Plaintiffs' Exhibit 91, can you, from that, determine which VTD that area is in? Am I correct it's in Jefferson Park? Right here.

A. Oh, yes. Thank you.

Q. Okay. Is Jefferson part of split VTD?

A. Yes.

Q. Did I check that block on Dr. Palmer's report? Whoop. It got moved. Prince George, Jefferson Park. Is that the data from that particular district, that VTD dot district?

A. It appears to be.

Q. Do you know whether or not that particular split VTD [329] is the largest in population of any of the split VTDs between 63 and 68?

A. I don't know. Oh, I'm sorry. We're just talking this table?

Q. Or let's—total. Do you know?

A. No. That's not information that I assessed.

Q. Okay.

MR. BRADY: Can you move this down just a little bit for me here and I'll—nope. The other way.

Q. Do you know how many—from your dot density map, we can't determine how many African-American voting age population is in that part of that VTD?

A. We could add those up in the data. I don't have the—we could add up the blocks.

JUDGE PAYNE: Wait, Doctor. I think the question is can you tell it from your maps?

THE WITNESS: You have to have very good eyes to count up those dots. I think that would be difficult.

JUDGE PAYNE: Okay.

Q. But it's fair to characterize that as majority black?

A. I believe so.

Q. Okay. And that's a split VTD that you did not bother to do an illustration of?

A. Oh, I would have been happy to have done an illustration. The—

[330] JUDGE PAYNE: Well, if we take the "bother" out of it, maybe the question is did you make an illustration of that VTD?

THE WITNESS: No.

JUDGE PAYNE: Yes or no.

THE WITNESS: No.

Q. And why did you decide not to use that VTD as an illustration even though it's—I will represent to you, the largest one splitting between these districts?

A. Because my report was very long. I'd be happy to discuss further this VTD split if you'd like, but I gather you don't want me to. But it would have been a very good illustration.

Q. It would have been a very good illustration?

A. Yes.

MR. BRADY: Can you move down to the data?

Q. Sixty-two is not one of the challenged districts, correct?

A. Correct.

Q. Do you know who it's represented by?

A. I have forgotten the name of the delegate.

Q. Is it a white republican delegate?

A. Yes. I do know that.

Q. Okay. And 63 is one of the challenged districts?

A. Yes.

[331] Q. Okay. 3100 blacks were assigned in that split VTD to 62, correct?

A. Yes.

Q. How many blacks voting age population were assigned to 63?

A. 737.

Q. Roughly four times the number?

A. Yes.

Q. How is this surgical precision?

A. Might we move back up to the dot density map? So this is exactly why a dot density map is useful as a supplement to just looking at the raw numbers. The question here is where were the lines drawn, how did

the lines come about. If we look at this section of this VTD, we can see that the VTD was split in such a way that it jogged out and extracted an African-American community and jogged back in in such a way as to keep, in that region, the African-American community in District 63.

Q. Does it actually show that?

JUDGE PAYNE: Excuse me. Your answer is "this section in this VTD." And when we're reading the record, they'll be no way anybody is going to remember that. So what's the "this section" and what's the "this VTD" in your answer?

[332] THE WITNESS: This is a very large VTD that—the name, again, is Jefferson Park, I believe.

JUDGE PAYNE: All right.

THE WITNESS: So it covers a lot of ground.

JUDGE PAYNE: When you say "this section"?

THE WITNESS: Yes. I'm speaking of the southern end of the—of the VTD.

JUDGE PAYNE: Okay. Of Jefferson Park VTD?

THE WITNESS: It is, indeed, the case that it would have been possible to have included all of VTD 62 and gone all the way up north to the river, but it's a fairly large VTD, and that would have added a lot of people. So there was a—the way this VTD was split in that area, it seems to fall along racial lines. And I don't know—I don't know why. I can't testify as to why. The point of these dot density maps is to show the lines and show the geography of race, to visualize that.

Q. I understand the reason. I don't understand why this doesn't illustrate exactly the opposite. The

line I just drew there appears to be an area that has little or no population, am I correct?

A. That's right.

Q. And so if I wanted to draw, with surgical precision, blacks into the VTD, why wouldn't I go up and get that?

[333] A. If the goal was to include every African-American in the region—

Q. It was not the question, every African-American. That's a significant African-American community. You said with surgical precision. That would seem to be a large community in a white district that was left out of your surgery. Am I wrong?

A. I believe it's the only one that was left out.

Q. Right here, are there census blocks right there where the incumbent—near where the republican incumbent lives there are majority minority?

A. The VTD—

JUDGE PAYNE: Yes or no.

A. They have all been included in 63, as far as I can tell. We can see that the line of the district jogs up into that part of Hopewell right here.

Q. I guess my eyes—your eyes are better than mine. When I look at the dot density map, there appears to be census blocks really probably virtually in the same—clearly in the same neighborhood and only probably a quarter or mile less from the incumbent republican member, which appear to be majority black. Am I just wrong about that? That's what it looks like on your Figure 11.

A. Would you point to those, please? Make a dot.

JUDGE PAYNE: You're going to have to clear that [334] screen before anybody can understand what you're doing.

MR. BRADEN: Yeah. Absolutely.

JUDGE PAYNE: What's the name of the republican whose name appears there, incumbent? Do you have that? No?

MR. BRADEN: No, but I can get it.

JUDGE PAYNE: We'll get it later. That's okay.

MR. BRADY: I had Jones here. I do have him back there. It's an incumbent republican member. Yeah. We've increased it now. And let me just put—

JUDGE PAYNE: All right. Now show him what you're talking about.

BY MR. BRADEN:

Q. Right there.

A. So you're asking why didn't they—

JUDGE PAYNE: Let me ask again. Go ahead and ask the question again.

Q. You said in your testimony there was surgical precision to having blacks put into the black districts is the way I understood it. And I'm pointing here to another area that appears to be majority census blocks that are in the republican district of 62. Am I wrong that those aren't majority black census blocks?

A. So I heard two questions. Are you wrong that those [335] are majority black census blocks. They may well be.

Q. Okay.

A. But the first question is why didn't they include them, and of course, I don't know the answer. But you believe—you seem to be suggesting that they should have come around like this and that that would be more surgical extraction than this.

Q. Or—

A. Yes, we will always find some additional African-American census blocks that could have been added. Of course, that will always be the case. I am merely showing what was done, which census blocks were added.

Q. But, of course—

JUDGE PAYNE: Hold on just a minute. Are you basically making the point that there's no surgical precision involved and that that's a pejorative term that need not be used and the actual way to look at the maps is to what look at what was done without the pejorative term. Is that what you're trying to ask him?

MR. BRADEN: Absolutely, Your Honor.

JUDGE PAYNE: Okay. And I think we all know that that's the case. So the point is made, and you can go ahead and proceed without that. I think everybody understands that.

Q. And in—so it was just happenstance you decided not [336] to use 62 as one of your illustrations of split VTDs?

A. Yes. I would have been happy to have included it.

Q. Let's go to your demonstrative.

JUDGE PAYNE: Is that the illustrative exhibits?

MR. BRADEN: Yes, the illustrative exhibits. And if we can go to Exhibit 30. And I promise, Your Honor, I'll try not to flog the dead horse here.

Q. But there, there, there, there. Did I circle areas that are probably majority black?

A. Those are not majority African-American VTDs, but there are some majority African-American census blocks that are in the middle of those VTDs, yes.

Q. And those could have, if you were willing to divide the VTDs, been put into the black majority district?

A. In a way that would create rather striking noncompactness, but yes.

Q. So that—so—so in that particular case, race didn't predominate over compactness?

A. In which particular case?

Q. In leaving out those black majority areas.

A. The decision to leave out those areas—

JUDGE PAYNE: I don't think he understands the question, and I don't understand it. And I wouldn't mind if you'd help clarify.

[337] MR. BRADY: Sure. Absolutely.

Q. You don't actually know the reason why, as an example, this and this was not put into 74?

A. No. I don't know the reason why any place was placed within or without a district. I am merely showing—

Q. Okay. And I've circled what appears to be—again, interpreting your map so tell me if I'm wrong—majority black census blocks?

A. Yes. But they're not contiguous with the district. They're isolated from the district.

Q. But it is possible to have drawn them into 74, correct? A One of the principles that is not—

JUDGE PAYNE: Yes or no, please.

A. Not in accordance with the constitution of Virginia.

JUDGE PAYNE: Dr. Rodden, please, yes or no.

A. No.

Q. And what Virginia provision would it not—constitutional provision would it not provide?

A. Contiguity.

Q. So it would not be possible to go through these relatively low or no population areas and include these and not move out some other area and make the population work?

A. Oh, I see. So you're suggesting drawing a corridor [338] and grabbing these and coming back?

Q. Yes.

A. That could have been done, sure.

Q. Would that conflict with some principle of redistricting?

A. In that area, it would make it less compact.

Q. Okay. So that—so a consideration of compactness, rather than race, might have kept that from happening?

A. It might have.

Q. Okay. Let's go to page 39. Have I circled around majority black area?

A. Yes.

Q. And that did—that's in what district?

A. Sixty-two.

Q. And could it have been put in here connected to the majority black district?

A. It would have been possible to have split ward 4 and come up and make that connection, yes.

Q. Did I circle what appears to be at least some majority black census blocks?

A. I believe that area in that circle is 50/50.

Q. Okay. I could have excluded that easily enough?

A. That would have been—that would have involved a split of—no. Yeah, I'm not sure where the split is. I'm sorry, of Jefferson Park, if Jefferson Park was [339] already split.

Q. So if I did that, it might conflict with some other state criteria?

A. The lower circle there?

Q. Uh-huh.

A. I'm sorry. I'm trying to understand where the Jefferson Park boundary is. No, I don't think that would—I mean, the VTD was already split. So adding that split I don't think would have done much to contradict any other principles.

Q. Have I put another dot on a black community, black neighborhood?

A. I can't tell.

Q. I probably—let me. My finger is not the best writing instrument. Do those appear to be potentially majority black census blocks?

A. There are—there are one or two blocks there, yes.

Q. And if we wanted to divide up and put blacks in black majority districts, we could have included that? That was the goal of the process?

A. A lot more—ward 7 could have been carved up in more places than the one, yes.

Q. Okay. Let's go to demonstrative on page 47. Does that show the Court what two districts?

A. It shows District 92 and 95, yes.

[340] Q. Is it my understanding that you believe the lengthy north expansion is a reflection of—of racial sorting?

A. Yes.

Q. Do you know—

JUDGE PAYNE: Where is the racial north expansion that you're speaking of? You've got Districts 94 and 95, 64 and 79 and 96 and 93 all sort of depicted there, and I don't know what you're talking about. Can you circle where you're talking about the northern extension?

All right. It's what has previously been referred to as the handle of the meat cleaver, right?

THE WITNESS: When I referred to the meat cleaver, I was referring to 74. This one I haven't come up with a good analogy yet.

JUDGE PAYNE: Okay. So now we know it's the part that runs from—

THE WITNESS: It's Warwick Boulevard.

JUDGE PAYNE: Warwick Boulevard is what it is, from the delegate's house there in yellow, up to the upper left part, and parallels 93. Okay. Gotcha.

Q. Do you know whether it would be possible to draw two majority minority districts without going that far north?

A. Oh, I believe it would be possible, yes.

Q. And have you seen maps showing that it's possible to [341] draw majority minority districts that go no further north of that?

A. I'm not sure if I've seen maps like that, but I believe that's possible. These ended up being 60 percent African-American voting age population districts. So these are two of the districts that had the largest surplus beyond the 55 percent target.

Q. So it's the sort of—let me go to—and you have a number of maps relating to the area that's circled where you show split precincts?

A. Yes.

Q. And where do those appear in your report? Page 47 maybe?

A. I think Figure 16, page 47.

Q. Okay. If we could go to that.

JUDGE PAYNE: And we're talking about Plaintiffs' Exhibit 69 now?

MR. BRADEN: Yes. Yes, Your Honor.

JUDGE PAYNE: Page 47?

MR. BRADEN: Page 47.

Q. And was it your testimony that this line right here exhibited stark racial sorting?

A. Yes.

JUDGE PAYNE: So the record is clear, you're talking about the line that runs along the Epes precinct [342] in District—what is it 95, and the Epes precinct; is that right? To the left side of the figure and the western side of Epes; is that correct? Is that what your question relates to?

MR. BRADEN: Yes, Your Honor.

JUDGE PAYNE: Is that what your answer related to, Dr. Rodden?

THE WITNESS: Yes.

JUDGE PAYNE: All right. Thanks.

Q. And did I understand that you testified that that was the reason for the wiggly line, the nonstraight line?

A. The map creates that appearance.

Q. Do you know whether that line follows a river?

A. There are some places in this area where there is a river involved. I'm not sure that's one of them.

Q. Okay. Do you know the answer to that?

A. I believe I do.

Q. Okay. Where is the river?

A. I believe it's further—further north.

Q. You don't believe there's a creek boundary or anything there? That's just—

A. These are residential streets. I'm quite sure of that.

JUDGE PAYNE: You don't think there's a creek in there feeding a reservoir? Is that what you're saying?

[343] A. Well, there's a creek in the area. There are several creeks.

JUDGE PAYNE: In Epes?

A. I don't believe that the creek forms the boundary between—forms the 95 boundary in Epes. You would see—you would see the lines would move like this. There are no creeks that run like that.

JUDGE PAYNE: I think we've got that fixed. You can go on.

Q. Do you know—which precincts are split up here? Am

I correct that Reservoir is split?

A. Yes.

Q. Do you know if Reservoir was unsplit and was—was put into the adjoining House district, this one, whether or not 95 would still remain more than 55 percent black?

A. Of course, it would. It ended up with 60 percent.

Q. Same way with all the split precincts?

A. That's right.

Q. So there was no need to split any of those precincts to maintain a 55 percent black voting age population in that district?

A. No, there was not.

Q. Would splitting those precincts potentially have a political impact?

A. It could.

[344] Q. Does it have a political impact?

A. I don't know.

Q. You don't know how any of those precincts vote?

A. I know how the—I've looked at how the precincts vote. I don't know, below the level of the precinct, how people vote. So I don't know what the purpose would be of a precinct split. There are a lot of white democrats in this area. So I would need to know—I would need political data to understand what would be the political implication of the split.

Q. Is that precinct overwhelmingly democratic.

A. The Reservoir precinct as a whole?

Q. Yes.

A. I'm afraid I don't have that memorized.

Q. Do you know whether this one is overwhelmingly democratic?

JUDGE PAYNE: What's "this one"?

MR. BRADEN: The one I just checked.

THE WITNESS: Epes.

JUDGE PAYNE: Epes.

A. I don't know. I've looked at maps of this area and I recall these precincts being rather democratic, but I can't give you the numbers.

Q. So if I were to walk down here, you wouldn't be able to tell me whether that—the inclusion of that precinct [345] in this district or in this district would have a political impact?

A. Would the inclusion of the entire Epes precinct in—

I'm sorry. Can you recall which district this is to the west?

Q. Yeah. Let me—

JUDGE PAYNE: I don't think this was the question, in fact. You used the word "walk," and I don't think anybody really had a handle on what you were asking. Maybe you ought to try again.

Q. I will absolutely try again. I think it might be easier if we go to Defendant-Intervenors' Exhibit 94?

JUDGE PAYNE: Do you have that over there, Doctor?

THE WITNESS: I can see it on the screen. Yeah, I think that's good enough.

MR. BRADEN: I believe he has one of the map books. I could be wrong.

JUDGE PAYNE: What page?

MR. BRADEN: This would be page 14.

Q. If you have it in front of you. You're not able to comment on the politics of Reservoir, Epes or any of these districts? You simply just don't know?

A. I was willing to offer that they were majority democratic VTDs, but I don't know by how much.

[346] Q. And do you know District 95, who was the member at the time the plan was drawn?

A. Delegate BaCote.

Q. And Glenn Oder?

A. Was in District 94.

Q. Yep. Two of them are in that district as drawn in the 2000—let's ask about the HB 5005. Are there two members in 94 as drawn? Do you see the stars?

A. Yes. It appears to have been drawn to force Robin Abbott to compete against Glenn Oder.

Q. And do you know the politics of political complexion of District 94 in this configuration?

A. I believe it's fairly competitive.

Q. Okay. What about District 93 on the other side? Do you know whether that was a competitive district?

A. I don't recall.

Q. So if someone testified that 93 was a politically competitive district, you just couldn't have any opinion on it?

A. That's correct.

Q. No knowledge. And if 94 was politically competitive, you couldn't have any opinion on that?

A. No. I testified that I was aware that that was a competitive district.

Q. So would it be safe to say, putting these areas in, [347] if these areas were heavily democratic, if you put them in either one of these two districts, it would make them more democratic?

A. As if they were heavily democratic, it would have that effect.

Q. And you don't know the answer, but if someone who did know the answer said that, you would not be able to dispute it?

A. Correct.

Q. That would be the same thing if we were to discuss the city of Hopewell, correct? You have no idea about its politics?

A. I have some idea about the politics, but not very—not in great detail.

Q. What would be some idea of the politics you understand?

A. Well, as we already discussed, there were white republican incumbents on both sides of the—of the district as drawn. But I'm afraid I don't know the recent election results for those two individuals, if that's what you're asking.

Q. So if someone—

JUDGE PAYNE: I know that you're mindful of what he was qualified in as an expert and that he rambled a little bit into this area in his direct testimony, but he [348] isn't qualified to testify about the politics of places at this juncture. He hasn't been accepted as an expert in that area, and yet you're asking him about it. It's considerably—it's your own cross. We've given you some leeway, but we're getting close to the old rule of thumb that enough is enough.

MR. BRADEN: Yes, Your Honor. I'll take your—let me tell you what the rationale is for it, and I will leave, while—while I can, leave with my shield, which is he opines continuously that race is the predominant reason for a variety of these activities when, in fact, as the Court has already recognized in this district, the principal reason was politics. I wanted to assure that he hadn't actually looked at that issue. But if—

JUDGE PAYNE: I think he isn't, hasn't looked at it. He can't qualify to testify about it, and so we don't

need to pursue it anymore. And I don't think Mr. Hamilton has offered him for that purpose. Have you?

MR. BRADY: So I guess my only one question, Your Honor, if you permit me, it seems, if you are going to say that race is predominant, the predominant factor, you have to eliminate other factors. And it appears to me he's incapable of eliminating other factors. So it seems that would be the basis for proving that his predominance analysis is faulty.

[349] JUDGE PAYNE: I think that's entirely a good argument to make, but we're not at that stage yet.

MR. BRADEN: Thank you, Your Honor.

JUDGE PAYNE: Let's get the record in first, and then we'll hear the argument.

MR. BRADEN: Thank you, Your Honor.

JUDGE PAYNE: All right. You don't have much in the way of redirect, do you, Mr. Hamilton?

MR. HAMILTON: Not much. Just a few points.

JUDGE PAYNE: Good.

REDIRECT EXAMINATION

BY MR. HAMILTON:

Q. Good morning, Dr. Rodden.

A. Good morning.

Q. I'm going to do my best to try—

JUDGE PAYNE: Excuse me, Mr. Hamilton. Ms. Hancock, I think that we need a change over here for the legal assistant. She was signaling. Not to you, but

to Ms. Hancock. So they can get ready and help you along.

MR. HAMILTON: She is more important than I am. That's for darn sure. Thank you.

Q. Dr. Rodden, you were asked by Mr. Braden a minute ago about whether splitting census blocks is sometimes necessary to equalize population between two districts [350] when you engage in redistricting. Do you recall those questions?

A. Yes.

Q. And I think your answer was that sometimes—

MR. BRADEN: Your Honor, I object. I think that's a mischaracterization. I think I said splitting the vote tabulation districts, and I don't think anybody has ever talked about actually splitting census blocks.

MR. HAMILTON: My apology. I'll rephrase the question.

JUDGE PAYNE: I think he's right about that.

MR. HAMILTON: He is, indeed.

Q. He asked you the question about whether it's sometimes necessary to split VTDs, or precincts, in order to equalize population between two districts. Do you recall that?

A. Yes.

Q. Is it necessary to split VTDs along—in such a way that divides predominately African-American areas from predominately Caucasian, or white areas, in order to equalize population?

A. Of course, not. There's any number of ways to achieve population equity through the VTD splits, any

number of VTDs to split and any number of ways to split those VTDs to achieve that.

[351] Q. Thank you. Mr. Braden also asked you about your dot density maps and whether they were ever used by legislatures and municipal entities in drawing plans. Do you recall those questions?

A. Yes.

Q. Are dot density maps used in your field of study of geo-spacial data analysis?

A. Yes, of course.

Q. Do you use them in your expert reports in the various litigations you've appeared in?

A. Yes, of course.

Q. And did—were they considered by this Court in the voter ID case that you appeared in earlier in this matter?

A. Yes, they were.

Q. And are they useful tools for analyzing the distribution of race and the impact that lines have on—in drawing maps and how they affect the population and racial composition of different districts?

A. Yes. I hope I've demonstrated that it's a useful analytical tool for examining the maps and understanding the incidents of race and the drawing of the boundaries.

Q. Now, Mr. Braden asked you whether you were aware of any legislature considering those maps. Are you aware of any legislatures considering expert reports like Dr. Katz's report in—during the process of—

[352] JUDGE PAYNE: That's beyond the scope of cross-examination.

MR. HAMILTON: I don't believe it is, Your Honor.

JUDGE PAYNE: You can call him back and deal with it later if you need to.

MR. HAMILTON: Thank you, Your Honor.

JUDGE PAYNE: You haven't gotten to that point in the record yet.

Q. Mr. Braden asked you about splitting Hopewell and whether you had seen a map showing that it's possible to achieve 55 percent districts without splitting Hopewell. Do you recall those questions?

A. Yes.

Q. Was Hopewell split?

A. Yes.

Q. How was it split?

A. As we've seen in the maps, it was split right along the racial divide.

Q. So if it's possible to achieve 55 percent without splitting Hopewell, what does that tell us, that they did it anyway along those lines?

A. I believe that's stronger evidence of racial predominance. If there's a setting in which the—the set target for satisfying the DOJ preclearance—the [353] understanding of the DOJ preclearance requirements and there are additional splits and stark racial divides that were created that were not necessary for the creation of that, that seems like stronger evidence of racial predominance.

Q. In a traditional redistricting application, would city boundaries typically be respected—would the goal be to not split cities or to split cities?

A. Typically in drawing a districting plan, we try to keep cities together.

Q. How about counties?

A. Yes. Counties also.

Q. Okay. And do we see evidence in your analysis—did you find analysis of both split cities and counties demonstrating racial predominance?

A. Yes. We saw split counties, split cities, municipalities. What was really striking is we even saw split small cities. Suffolk and Hopewell are cities that are easy to include whole in a districting plan, but yet they were split along racial lines.

Q. Okay. And we had this whole conversation about VTD 207 in The Fan and whether this made the neighboring district more or less heterogeneous. Is your point simply that when you add another piece of The Fan to—or a piece of The Fan to the suburban district that comes into [354] Richmond, it makes it more heterogeneous? Is that right? A That's the point I was trying to make, and I think I wasn't clear enough.

MR. HAMILTON: Could we go to page 20 of Exhibit 69? Could you highlight that first paragraph that begins, "Indeed, since Delegate Loupassi"? And maybe blow that up, if you can.

Q. So you were asked a couple of questions about this, the last sentence in particular. "It simply is not plausible that splitting up The Fan neighborhood would advance Mr. Loupassi's political career." That

was the question you were asked by Mr. Braden, but I think he left out the rest of the paragraph. And I won't ask you to read it in the interest of time, but the point of this paragraph is that it was a poor performing district for Delegate Loupassi; is that right?

A. Yes. I simply reported the data. I didn't think there was anything controversial about that.

Q. All right. Thank you, sir. And would you remind the Court, your Ph.D. is in what field?

A. Political science.

Q. Thank you. Now, on—Mr. Braden asked you a little bit about school district boundaries. I believe this was in connection with your discussion of District 69 and straddling the James River, and I think he asked you, do [355] you know if the school district knew about school district boundaries. Why did you bring up school district boundaries in your report, sir?

A. Yes. I find communities of interest to be a difficult thing to—to come to grips with, and I think Courts have struggled with this as well. And my use of school district boundaries comes from, in my own experience, the way people think about neighborhoods and the way they think about their community is often very much based on the attendance zone of the schools to which children attend.

So it is useful to me as a shorthand for thinking about neighborhoods and thinking about communities of interest, because we don't have maps with geospacial boundaries of communities of interest. And we don't have—often we don't have maps with boundaries of formal neighborhoods. In Richmond, we do. You know, people have a very good idea of where The Fan

begins and ends. But beyond that, the concept of neighborhood and community of interest can be difficult.

And so I used school attendance zones and school boundaries as a way of empirically addressing the notion of communities of interest.

Q. Thank you, sir. So I'm calling up the illustrative exhibit that Mr. Braden used a minute ago.

[356] MR. HAMILTON: And if we could just zoom in on the table at the bottom of this and enlarge it so that it's actually readable for those of us over 50.

Q. He asked you about Jefferson Park.

MR. HAMILTON: Move it up a little bit higher, if you would, please.

Q. He asked you about Jefferson Park and he read off the number of the—the raw numbers of the black voting age population that were assigned to the two different districts, point out that District 62 was assigned 3136 African-Americans, while District 63 was assigned only 737. Do you recall those questions?

A. Yes.

Q. Okay. Has District 62 got a larger population than District 63, raw population? It's the first column.

A. You're referring to the population of the districts within Jefferson Park?

Q. Correct.

A. Yes. The population within 63 is 2127. The population within 62 is 6837.

Q. So—so the portion assigned to District 62 was three times larger than the portion assigned to District 63?

A. Yes.

Q. And it's roughly the same percentage African-American [357] population, despite the differences in the numbers, because the districts—the portions of the raw population are much larger; isn't that right?

A. Correct.

Q. Okay. Thank you. Now, Mr. Braden asked you, just at the end of your examination, about this northern arm that extends and splits the Epes and Reservoir VTDs. I'm not sure if Ms. Marino can show that to us or not. And I believe he asked, would it be possible to reach 55 percent black voting age population without splitting these VTDs up here in the northern part of that extension. Do you recall those questions?

A. Yes.

Q. And is it possible to reach 55 percent without splitting those VTDs?

A. Yes.

Q. Did they do it anyway?

A. Yes.

Q. And why is that significant, or is it significant?

A. Well, my approach to—throughout the report, was to examine the lines that were drawn and to examine the racial splits that they created. And when the entire arm of that on the west side was—was formed by VTD splits and it's not possible for all those VTD splits to have been necessary for population

equalization. So I found [358] that to be strong evidence consistent with the notion of predominance.

Q. And—and Mr. Braden asked you, at various points, about pockets of African-American communities that were not included in one or another of the challenged districts. Was every single black voter in the Richmond and tri-cities area drawn into one or another of the challenged districts, every single voter?

A. Of course not.

Q. Was every single predominately census block drawn in?

A. No.

Q. Okay. Is the same true in Tidewater? Was every single voter, African-American voter in the Tidewater area drawn into one of the challenged districts?

A. No. That would be impossible.

JUDGE PAYNE: I think we're getting into some pretty extrinsic material. So anything else that you have, Mr. Hamilton?

Q. Does the fact that not every isolated pocket of African-Americans were drawn into one of the challenged districts undermine your conclusions at all?

A. Of course not.

MR. HAMILTON: Thank you, sir.

No further questions, Your Honor.

JUDGE PAYNE: We're going to take a recess. But [359] I'd like to say something, but only on behalf of myself. I don't purport to speak to the Court.

The experts are sitting in the room and the lawyers are in the room. I do not find it helpful for experts to be advocates, for experts to go beyond the question that is asked. If a lawyer wants to pursue it, the lawyer will pursue it. All that does is indicate to me, in my credibility assessment, an inability to stay to the task and perhaps an indication of advocacy, which I don't think is the role of experts.

And in addition to that, if an expert is asked a question beyond his expertise, he can't testify to it because he's not qualified in it or not been accepted in that.

The defense has an obligation and the plaintiff have an obligation to keep it that way; the plaintiff by questioning and the defendant by objecting. And what's happened in this particular examination is that it has all become particularly protracted, and unnecessarily so, beyond the bounds of what he's qualified to testify to and what he's accepted to. And both of you have a responsibility to keep that from happening. Now, I don't want to assume the responsibility, and I don't think anybody else on the Court does. But just remember, that when an expert becomes an advocate, it affects the [360] credibility of the expert.

All right. We'll take a 20-minute recess.

MR. HAMILTON: Thank you, Your Honor.

(Recess taken.)

[361] MS. KHANNA: Your Honors, plaintiffs call Dr. Maxwell Palmer to the stand.

JUDGE PAYNE: Dr. Palmer.

MAXWELL B. PALMER,

a witness, called at the instance of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. KHANNA:

Q. Good morning, Dr. Palmer.

A. Good morning.

Q. Can you please state your full name for the record.

A. Maxwell Benjamin Palmer.

Q. And can you please spell your last name.

A P-a-l-m-e-r.

Q. Dr. Palmer, you are an expert for the plaintiffs in this litigation; is that right?

A. Yes.

Q. Can you please turn—in the notebook in front of you, can you please start—look at the exhibit, Plaintiffs' Exhibit 71 and Plaintiffs' Exhibit 72.

A. Yes.

Q. Do you have that open, the binder in front of you?

A. 71—yes.

Q. Can you please identify those two exhibits.

[362] A. These are my expert report and reply report for this case.

Q. And you have working copies of those same reports with you on the stand; is that right?

A. Yes.

Q. Can I direct your attention to page 69 of Plaintiffs' Exhibit 71 which is your expert report.

A. Yes.

Q. What is this document?

A. It is my CV.

Q. Is this a complete and accurate summary of your educational background and professional experience?

A. Yes.

Q. Can you please summarize your educational background.

A. I received an undergraduate degree in mathematics and government and legal studies from Bowdoin College in Maine and my Ph.D. in political science from Harvard University.

Q. Have you ever attended law school?

A. No.

Q. You are not a lawyer?

A. No.

Q. Where are you currently employed?

A. I'm an assistant professor of political science at Boston University.

Q. And what are your principle areas of research?

A. My research focuses on American political institutions, [363] including Congress and redistricting, as well as local political institutions and the returns to office for politicians.

Q. What classes do you teach?

A. I teach an introduction to American politics for undergraduates as well as a course on Congress and bureaucracy. For graduate students, I teach courses

on formal theory and political methodology classes on political analysis and research design.

Q. Have you ever published peer-reviewed articles or studies in the area of redistricting?

A. Yes.

Q. Can you identify those articles for the Court and briefly describe them?

A. Yes. There are two listed on my CV. The first is "Institutional Control of Redistricting and the Geography of Representation" in the *Journal of Politics* with Barry Edwards, Michael Crespin, and Ryan D. Williamson, and the second is "A Two Hundred-Year Statistical History of the Gerrymander" in the *Ohio State Law Journal* with Stephen Ansolabehere.

Q. Do you have any experience with redistricting outside of academia?

A. Yes.

Q. In what way?

A. I have worked as a litigation consultant on numerous [364] redistricting and voting rights cases.

Q. Can you please describe the kind of work you performed as a litigation consultant?

A. I collected and merged complex data sets including census data and precinct-level election data. I did geographic analyses including compactness, voter—racially polarized voting analyses including ecological regression and ecological inferences.

Q. What cases were you involved in?

A. They are listed in paragraph ten of my report. They include *Perez v. Perry* in the Western District of

Texas; *Harris v. McCrory* in the Middle District of North Carolina; *Guy v. Miller* in the District Court for Nevada, and two cases in state courts in Florida.

Q. And you mentioned in paragraph ten that you worked alongside Dr. Ansolabehere on some of these cases; is that right?

A. Yes.

Q. Did you do any work with Dr. Ansolabehere in this case in 2015?

A. No.

Q. Have you ever testified as an expert witness before?

A. No.

MS. KHANNA: Your Honors, pursuant to ER 702, I would proffer Dr. Palmer as an expert in redistricting, political [365] science, and data analysis.

JUDGE PAYNE: All three areas?

MS. KHANNA: I think political science and data analysis particularly as it pertains to redistricting.

JUDGE PAYNE: Let's get it straight what we're doing now, because we don't want to get into the problem we got into with the last witness with testimony going beyond what he was authorized to do. One is what; an expert in redistricting?

MS. KHANNA: Yes.

JUDGE PAYNE: Anything else?

MS. KHANNA: Data analysis and political science.

JUDGE PAYNE: Data analysis of what?

MS. KHANNA: Data in the—as it pertains to redistricting.

JUDGE PAYNE: Data analysis as it pertains to

redistricting. Do you accept him as an expert in those two areas, Ms. McKnight?

MS. McKNIGHT: Yes, Your Honor, we do.

THE COURT: He's accepted as an expert in those areas.

MS. KHANNA: And that included political science; is that correct?

JUDGE PAYNE: No. Redistricting and data analysis as it pertains to redistricting.

MS. KHANNA: Okay. I also wanted to clarify that [366] he's also an expert—we're offering him as an expert in political science also as it pertains to redistricting.

JUDGE PAYNE: Do you accept him as that? What does that mean? I majored in political science and I studied a lot of things, but I don't know how you get to be an expert in one without—what that really means. What is political science as it pertains to redistricting—

MS. KHANNA: Maybe I'm unnecessarily drawing a distinction here and I don't mean to be, but as I understand it, he testified about his doctorate in political science and his experience and teaching in political science research methodologies which include the statistical analyses and the data analyses that we've already discussed.

JUDGE PAYNE: So it's the same thing.

MS. KHANNA: I think that's right.

JUDGE PAYNE: She's accepted him in redistricting and data analysis as it pertains to redistricting.

MS. KHANNA: Thank you, Your Honor.

Q. Dr. Palmer, let's turn to your work that you specifically performed with respect to this case. What were you asked to do?

A. I was asked to do three different things. First, I was asked to examine racial predominance in the drawing of the district lines; second, racially polarized voting and a [367] necessity of the 55 percent BVAP threshold; and third, to evaluate the opinions of the other experts in this case.

Q. What materials have you reviewed in forming the expert opinions for the reports that you prepared here?

A. I reviewed the 2015 court opinion as well as the expert reports from 2015 along with four different data sources.

Q. What were those data sources?

A. First I used U.S. census data provided by both the U.S. Census Bureau and the Virginia Division of Legislative Services. Second, I used cartographic shape files; that is digital map files also from the Census Bureau and Virginia Division of Legislative Services for census blocks, VTDs, and the districts. Third, precinct-level election results from Virginia Department of Elections, and then fourth, data files and code provided by the other experts in this case.

Q. And you are specifically referring to the data section, Section 4 of your report on page four of Plaintiffs' Exhibit 71; is that right?

A. Yes.

Q. You mentioned you also reviewed the expert reports submitted in the 2015 round of this case?

A. Yes.

Q. What about your reply report, what materials did you examine in preparing that?

A. The rebuttal reports by the expert witnesses, the data and [368] code they provided with their reports, as well as additional election data from the Virginia Department of Elections, and additional census data using the American Community Survey.

Q. So you reviewed the rebuttal report provided by Dr. Katz in this case?

A. Yes.

Q. And his code as well?

A. Yes.

Q. Did you review the rebuttal report provided by Dr. Hofeller in this case?

(Court reporter interruption.)

THE COURT: Both you probably need to. You are picking up the pace.

MS. KHANNA: I'm sorry, you'd like us to pick up the pace?

JUDGE PAYNE: No. You're talking too fast.

MS. KHANNA: I just wanted to make sure.

Q. Did you read the—review the rebuttal report provided by Dr. Hofeller in this case?

A. Yes.

Q. Did you review any code or data provided alongside?

A. No, he did not provide any code or data.

Q. And what about with Dr. Hood, did you review his report?

[369] A. Yes.

Q. And did you review his code as well and his data?

A. I reviewed his data. He did not provide replication code.

Q. Dr. Palmer, were you able to reach a conclusion regarding racial predominance in the drawing of the challenged districts?

A. Yes.

Q. What did you conclude?

A. Across three different analyses, I found evidence of racial predominance. First I found evidence that race predominated in the ways that VTDs, cities, towns, and census places were split within challenged and non-challenged districts.

Second, I found evidence of racial predominance in the way that populations were moved in and out of the challenged districts, and, third, I found an analysis of race versus party in the assignment of VTDs to challenged districts that race predominated over party and had a large and statistically significant effect on the assignment of VTDs to the challenged districts.

Q. You also mentioned you were asked to examine racially polarized voting in the challenged districts.

Did you reach any conclusions with respect to your racially polarized voting analysis?

A. Yes.

Q. What did you conclude?

[370] A. I concluded that the 55 percent BVAP threshold in the challenged districts was not necessary for these districts to continue electing African-American candidates of choice.

Q. Let's walk first through your predominance analysis. You have mentioned three different type of analyses that you had looked at, and the Court has had an opportunity to study your report, so we're not going to walk through every single data point. We're just going to hit on a few key components.

Let's start with your analysis of split geographies which is the first substantive topic that you address in your report. Why did you decide to examine split geographies as part of your inquiry into racial predominance?

A. Respecting existing political boundaries is a core traditional redistricting principle, and so I looked at deviations from that principle and at that—if there were—if that was driven by race.

Q. And what can an analysis of split geographies tell us about race?

A. If we find a consistent pattern of division by race, that would be evidence of racial predominance in the violation of the traditional redistricting principle.

Q. Let's first discuss your analysis of split VTDs. First, did you review Dr. Ansolabehere's analysis of split VTDs from the 2015 litigation in this case?

A. Yes.

[371] Q. And do you recall what he concluded about VTD splits?

A. Yes. His primary conclusion was that VTD splits were much more common in the challenged districts than in the non-challenged districts.

Q. And how does your analysis of VTDs compare to Dr. Ansolabehere's analysis?

A. So I take the analysis another level to look at the demographic differences between the different parts of the VTDs that are split between the challenged and non-challenged districts.

JUDGE PAYNE: Does that mean you didn't compare them then, because her question was how does yours compare to his. Did you compare them, or are you saying you did something else?

THE WITNESS: I did something else beyond what he did.

JUDGE PAYNE: But you didn't compare yours and his then?

THE WITNESS: They're in agreement. That is, I found the same number of split VTDs, and what I'm doing here is now looking within the VTDs for differences across the splits.

Q. Thank you. Dr. Palmer, is racial data available at the VTD level?

A. Yes.

Q. What about election data, is that available at the VTD level?

[372] A. Yes.

Q. And where does that election data come from?

A. The Virginia Department of Elections.

Q. And VTDs are comprised of census blocks; is that right?

A. Yes.

Q. What data is available at the census block level?

A. Counts of population by race and ethnicity.

Q. What about election data, is that available at the census block level?

A. No.

Q. Why not?

A. The smallest unit at which we have electoral data in Virginia is at the VTD level, and so while we would allocate votes in the same proportion across all the census blocks, we can't actually see any differences across VTDs—across census blocks, excuse me, in voting behavior.

Q. What about party registration information, is that available below the precinct or VTD level?

A. No. Virginia does not have party registration on its voter file.

Q. So based on your analysis, how many VTDs were split between a challenged and a non-challenged district?

A. There were 32 VTDs split between a challenged and a non-challenged district.

Q. And I think there when we're defining those, you are [373] talking specifically about those VTDs in

which there was population designated to either side of the split; is that right?

A. That's right. There were a few VTDs that were split but where part of the—part of the VTD in one district had no population in it, for instance, if it was a park or a cemetery, I did not look at those splits because there's no population to compare to on the one side of the split.

Q. Okay. And how many of the challenged districts included a VTD or a populated VTD that was split on either—with a non-challenged district?

JUDGE KEENAN: Excuse me, counsel. If you could clarify it for us, when you're referring to challenged districts, are you referring to 75 within that group, or is 75 not part of that?

MS. KHANNA: Thank you, Your Honor. I think—I think I personally am referring to 75 within that group, I think just because that was part of the analysis. It was a complete analysis that included all of the majority-minority districts.

JUDGE PAYNE: Were you, Doctor?

THE WITNESS: Yes.

JUDGE PAYNE: Why?

THE WITNESS: I was asked to do so.

JUDGE PAYNE: How many VTDs are there in all of the [374] challenged and unchallenged districts in Virginia? What's the total number of VTDs in Virginia?

THE WITNESS: It's a little bit more than 2,000. I don't have the exact number in front of me.

JUDGE PAYNE: Excuse me, go ahead.

Q. Just to clarify, that was a little more than 2,000 VTDs across the entire state?

A. That's right.

Q. Okay, so you mentioned that there were—you referred to 32 populated VTD splits between challenged and non-challenged districts. How many challenged districts were encompassed in those splits?

A. That included ten districts that had one or more VTDs split with a non-challenged district.

Q. One of those ten was District 75; is that right?

A That's right.

Q. What did you find regarding the respective populations in each piece of those split VTDs?

A. I found that in 31 of the 32 split VTDs, the BVAP percentage in the area allocated to the challenged district was higher than the BVAP presented in the area allocated to the non-challenged districts.

Overall, there was a 24 percent difference in BVAP between the areas in the challenged districts and the areas in the non-challenged districts.

[375] Q. Let's take a look at table three of your report. That will be Plaintiffs' Exhibit 71, page 52. What does this table depict?

A. This table lists all of the VTD splits in the Dinwiddie/Greenville area.

Q. Okay. I'd like to focus on the Hopewell Ward 7 VTD split here at the very bottom just as an example. Can you walk us through the numbers that are reflected on table three for that VTD?

A. Yes. So, first, this table shows us that the VTD is split between District 63 and District 62. The next column shows the total population in each part of the split; that is, there are 857 people in District 63 and 2,085 people in District 62.

The next column shows the number of black voting-age people in each part of the split. There are 398 black voting-age people in District 63 and 390, almost the same number, in District 62.

Then the last column has a BVAP percentage for each part of the split. That is what percent of the voting-age population in that area is black, and here we see a stark difference. The population—the voting-age population in District 63 is 71.6 percent black compared to only 25.5 percent black in District 62.

Q. Thank you. So even though the absolute number of eligible black voters appears to be similar, the percentage of total [376] population or total number of voters is much higher in District 63 than 62?

A. That's right. Black voters are more heavily concentrated in the District 63 portion than the District 62 portion.

Q. Can you turn to figure three of your report which is on Plaintiffs' Exhibit 71, page 31. I'd like to focus on that top left figure entitled District 63: Hopewell/Ward 7. What does this figure reflect?

A. This figure is a map of Hopewell Ward 7 which is the entire area mapped here with the red lines noting the division between District 63 and District 62. There are light gray lines that map out the boundaries of each census block within Ward 7, and

then each census block is shaded by the—by its share of the black voting-age population of the whole area that resides in each block. In other words, the darker the green coloring, the higher the number of black voting-age people that live in that particular block.

Q. How does this figure correspond to table three?

A. So this map just maps where black voting-age people live. It doesn't show any relative population differences. What it shows is that there's an area at the bottom here right underneath the number 63 with the highest concentration of black voting-age people in the VTD.

Then if you look at the District 62 portion, which are all sort of roughly a similar shade, we see that a lower [377] concentration of black people are spread across the rest of the District 62 portion of the VTD.

Q. Okay. So I want to take a look at that scale, that legend on the bottom of the figure. Can you please explain what that represents?

A. Yes. So the scale shows the percentage of the total black voting-age population within the VTD that resides in any one census block, and so, for example, the scale goes up to about 45 percent for the darkest green area, and what that means is that about 45 percent of the black voting-age people in the entire VTD live in that one dark green census block that's right below the number 63.

Q. And then the remainder are scattered throughout the remainder of the VTD?

A. That's right.

Q. Is this same scale used in all of the figures of your report?

A. No.

Q. Why not?

A. Each figure is its own separate map, and the scale is set so that we can perceive differences within each map and not across maps.

Q. So just to clarify, are you making—in the figures three, four, five, six, seven, are you making any comparisons across VTDs?

[378] A. No. I'm only looking at differences within VTDs.

Q. So the purpose—then this particular map would show where eligible black voters are residing in the VTD relative to other places within that VTD.

A. That's right.

Q. What does this figure tell us—I guess we've already kind of covered that. What does—can you please turn to table five of your report.

JUDGE PAYNE: Table five or page?

MS. KHANNA: Plaintiffs' Exhibit 71, page 54.

Q. Can you please briefly describe what this table is.

A. This is the exact same as table three but for the South Hampton Roads area. That is, it lists all the VTDs split in this area with the population, number of black—people of black voting-age—black voting-age people and percentages of BVAP of each area.

Q. Okay. I'd like to focus in on the Virginia Beach/Aragona entry here. Can you please tell us what you conclude from table three regarding this particular VTD split.

A. Aragona is divided between District 90 and District 85. There is 1,844 people in the District 90 portion of this split and 5,436 people in the District 85 portion of the split. There are 788 black voting-age people in District 90 and a similar number, 792 black voting-age people, in District 85, but because of the relative sizes of the populations in each [379] part here, there's a very wide difference in the share—in the BVAP share of each part of the split. 61.6 percent of the voting-age population in the District 90 part of Aragona is black. Only 19 percent of the population in the District 85 portion of Aragona is black.

Q. So a higher concentration in District 90?

A. Yes.

Q. Can you take a look at the Zion Grace VTD here on this table. Can you tell me what's different about that particular VTD?

A. Zion Grace is the only exception. It's the only one of the 32 VTDs that is not divided such that there's a higher concentration of black voters in the challenged district portion than the non-challenged district portion.

Q. Did that surprise you?

A. The existence of one—of this particular one didn't surprise me. What was surprising was that it was the only one split in this way. If we're splitting VTDs to equalize population, we shouldn't expect to see the same consistent pattern of division by race across all of them.

We should expect that some VTDs have a higher share of black voting-age population in the challenged districts. Some VTDs should have a lower share of

black voting-age population in the challenged districts. We should not expect to see a consistent pattern.

[380] Q. And you just found this one in which that was not the case?

A. This was the only one.

Q. Can we turn to figure five which is on page 33 of Plaintiffs' Exhibit 71. Let's focus on that map on the right. This is the Aragona VTD; is that right?

A. Yes.

Q. And what do you conclude from this figure?

A. This figure, as in the previous one, maps just the Aragona VTD and in the same way each census block is shaded by the percentage of the black voting-age population of the VTD that resides in that particular block.

So what we see in District 90 is there's one block with an especially high concentration of black voting-age people, and that is put in District 90. And then District 85 generally has a relatively low number of black voters spread across the rest of the VTD.

Q. Let's take a look at table six of your report which is page 55. Without walking through the data points, we can just briefly describe what this table is about.

A. This is the same table as the previous ones listing split VTDs except for the North Hampton Roads area. What this table shows is there are five VTDs all split between District 95 and Districts 93 or 94. In all five cases, the portions of the split VTDs allocated to District 95 have a higher share of the [381]

black voting-age population than the portions put in Districts 93 or 94.

Q. We just walked through your analysis of the VTDs that were split between challenged and non-challenged districts. Did you draw any conclusions based on your analysis of this VTDs?

A. Yes. I found a consistent pattern of division by race in how VTDs were split between the challenged and non-challenged districts. Areas of higher concentrations of black voting-age population were put in the challenged districts. Areas of lower concentrations of black voting-age population were put into the non-challenged districts.

Q. Dr. Palmer, is it common to split VTDs for purposes of equalizing population?

A. Yes. Splitting VTDs to equalize population is very common, but, as I said, what's uncommon is to see this consistent pattern of splitting by race.

Q. What about the number of VTD splits in a given district, can that tell us anything about whether the VTD splits were necessary for population equality?

A. Generally, we should be able to only split one VTD between a given pair of districts to equalize the population.

Q. If can you please turn back to table four which is on page 53—

JUDGE PAYNE: You can achieve population equality in every instance only by—and it's only then necessary to split [382] one VTD no matter what you are doing? Is that your principle?

THE WITNESS: That should generally be the case.

JUDGE PAYNE: No matter what the population of it is? Suppose one is—the goal is 81,000 and the population is 50-, are you saying that in that instance, it should be necessary to split only one VTD to get to 80?

THE WITNESS: I'm sorry, I don't understand the question.

JUDGE PAYNE: Population equality is what you are talking about; right?

THE WITNESS: Yes.

JUDGE PAYNE: The goal is 80,000. In fact, you have 50,000 in the district. Are you saying that in order to get the population goal up to 80,000, all you have to do is split one VTD?

THE WITNESS: No. The first thing you would do would be to move many whole VTDs that are not split to get relatively close to 80,000, and then once you are within a thousand or a few hundred of the target, then you would split one VTD to achieve equal population.

Q. Just to clarify, Dr. Palmer, is it your testimony that it is always only one VTD that should be split for population equality or that that's generally the case?

A. Generally the case.

Q. And maybe—

[383] Q. JUDGE PAYNE: Excuse me, but why is it generally the case? Say you have 80,000 and 70,000, why is it then necessary to split only one VTD to get population equality? THE WITNESS: You could first move whole VTDs to get closer to population equality

before it was necessary to split one to get to the actual target number.

JUDGE PAYNE: Suppose you couldn't do that.

THE WITNESS: I suppose there might be a rare case where you wouldn't, but generally, imagine you have one district at 75,000 people and one district at 85,000 such that need to move 5,000 people from one VTD to the other.

If there are—if there's—if the VTDs are really big, let's say there's a 10,000-person VTD, you could split that one and one alone. But if the VTDs are small, let's say about a thousand people each, you could just move five whole VTDs to get equal population and not have to split them all.

Q. Maybe it would help to look at an example. If you could turn back to table four which is on page 53 of your report. So I believe here we see three VTDs that are split between District 74 and District 72; is that right?

A. Yes.

Q. Those are the Belmont, Brooklyn, and Moody VTDs.

A. Yes.

Q. Would there have been a way to unsplit some of these VTDs and still achieve population equality?

[384] A. Yes.

Q. How?

A. One way to do this is to see that in the Brookland VTD, only 205 people are being put into District 74, and in the Moody VTD, only 594 people are being put into District 74. That is a total of 799 people.

Another way to get 799 people put into District 74 would be to look at the Belmont VTD where there's 1,239 people in the 72 portion. That is, instead of splitting three VTDs, we could reconfigure the Belmont VTD to take an additional 799 people out of the District 72 portion and put them into District 74 portion.

And then instead of splitting Brookland and Moody, you would just put those two VTDs entirely within District 72. So what that would do would be to keep the populations of each district exactly the same while only having one VTD split.

JUDGE PAYNE: What would it do to the BVAP population in the structure you just described?

THE WITNESS: I have not done that calculation.

JUDGE PAYNE: Wouldn't you have to do that calculation if you were doing a redistricting and trying to comply with the Voting Rights Act?

THE WITNESS: If it was necessary to split these three VTDs in this way to achieve the—

JUDGE PAYNE: That's not what I asked. Wouldn't you [385] have to do that calculation in order to make sure you were complying with the Voting Rights Act?

THE WITNESS: If it was necessary to split these three VTDs in this way to achieve the—

JUDGE PAYNE: That's not what I asked. Wouldn't you have to do that calculation in order to make sure you were complying with the Voting Rights Act?

THE WITNESS: Yes.

JUDGE PAYNE: Okay.

MS. KHANNA: To clarify, I understood that that—my question was really specifically about population equality to the extent that the argument is being made VTDs were split not for racial purposes or Voting Rights Acts purposes but for the population equality purposes to see if they could have been unsplit in certain ways—

JUDGE PAYNE: Just ask a question. You don't have to go back and argue.

MS. KHANNA: Understood, Your Honor.

Q. Dr. Palmer, you also provided a logistic regression analysis of census block assignment to challenged districts; is that right?

A. Yes.

Q. What is a logistic regression analysis?

A. Logistic regression analysis is a model that estimates the probability that a census block within one of the split VTDs will be assigned to a challenged district as a function of its black voting-age population.

Q. So it's a predictive assessment of the likelihood a VTD would be assigned to a challenged district as a function of its race.

[386] A. That's right.

Q. And is that reported anywhere—where do you report the results of that analysis?

A. Table two.

Q. That's on page 51 of your report. And without walking through each and every data point, can you just tell us what you conclude from table two?

JUDGE PAYNE: What page is that? Excuse me.

MS. KHANNA: Sure. We're on page 51 of Plaintiffs' Exhibit 71.

Q. So can you tell us what you conclude from table two?

A. I find a strong positive and statistically significant relationship between the black voting-age population within a census block and its likelihood of being assigned to a split—I'm sorry, its likelihood of being assigned to a challenged district. That is, the higher the BVAP within a census block, the more likely it is to be assigned to a challenged district.

Q. Okay, Dr. Palmer, you also examined VTDs that were split between two challenged districts; is that right?

A. Yes.

Q. And is that on table seven of your report?

A. Yes.

Q. Table seven is on page 56. Did you draw any conclusions based on your analysis of VTDs that were split between two challenged districts?

[387] A. Yes. The effect of these VTD splits is to achieve the 55 percent BVAP threshold in one or both of the districts between which they are split.

Q. If we could take a look at the Brambleton VTD here on table seven, this is split between Districts 89 and 90; is that right?

A. Yes.

Q. And what is the BVAP of District 89 under the enacted map?

A. Under the enacted map, the BVAP of District 89 is 55.5 percent.

Q. What is the BVAP of District 90?

A. 56.6 percent.

MS. KHANNA: And just to clarify for the Court, those BVAP numbers are reflected—the BVAP of the districts in the enacted map, they're on table 22 of Dr. Palmer's report.

Q. So what does your analysis show about how the Brambleton VTD was divided between these two challenged districts?

A. So this is a high BVAP VTD. It's 96 percent BVAP. Under the benchmark map, it was entirely in District 90, and if this was restored holding all else equal, such as the entire VTD were put back into District 90, then BVAP in District 89 would drop from 55.5 percent to 54.7 percent, below the 55 percent BVAP threshold.

Q. Let's look at the Richmond city 505 VTD. That's divided here between Districts 6—actually, let me take a jump to 703 [388] first.

JUDGE PAYNE: Say again.

MS. KHANNA: My apologies. I'm going to go to 703 before I go to 505.

Q. That one is divided between District 70 and 71; is that right?

A. Yes.

Q. What is the BVAP of District 71 under the enacted map?

A. 55.3 percent.

Q. What about the BVAP of District 70 in the enacted map?

A. 56.4 percent.

Q. What does your analysis show about how VTD 703 was divided between these two challenged districts?

A. Like Brambleton, VTD 703 is a high BVAP VTD. It is 89.9 percent BVAP. Under the benchmark map, it was entirely in District 70, and if, holding all else equal, this VTD were returned entirely to District 70 and not split, then BVAP in District 71 would drop to 54.9 percent.

Q. Now let's take a closer look at the Richmond city 505 VTD. That one is split between District 69 and 71. What is the BVAP of District 69?

A. 55.2 percent.

Q. What about 71?

A. 55.3 percent.

Q. What does your analysis show about the way this VTD was [389] split between these two challenged districts?

A. This VTD is different from the previous two. It is a very low BVAP VTD, only 15 percent BVAP, and as a result, this is more about the allocation of white voters and the effect of the allocation of white voters on BVAP levels in the districts rather than the allocation of black voters. That is, if we undid this split, holding all else equal, and put the entire VTD in District 71, then the BVAP of District 71 would drop to 45.5 percent.

Q. If you put the entire VTD in 71, the BVAP of 71 would have dropped; is that right?

A. Yes. Similarly, if you put the entire VTD into District 69, then the BVAP of District 69 would drop to 54.4 percent.

Q. Dr. Palmer, why does the movement of white voters matter?

A. Achieving the 55 percent BVAP threshold can be done in two ways. One is adding more black voters, and one would be removing nonblack voters. So the addition of nonblack voters reduces the overall percentage of black voters within the district.

Q. So if this predominantly white VTD were added to either one of the challenged districts entirely, then that particular challenged district would have fallen below 55 percent threshold; is that right?

A. That's right.

Q. Okay, Dr. Palmer, all of these VTD that we've talked [389] about, including those that are split between challenged and non-challenged and those that are split between two challenged districts, could they have been divided on the basis of partisanship?

A. No.

Q. Why not?

A. We don't have any party data below the VTD level.

Q. Can we take another look at figure five on page 33 of your report. I'm looking back at that Aragona VTD that we looked at earlier. This shows us where black voters live within the VTD; is that right?

A. Yes.

Q. And it shows a higher concentration of black voters in the District 90 portion than in the District 85 portion?

A. Yes.

Q. Now, using available election data, can you tell me where the higher concentration of Democrats is in this VTD?

A. Using election data alone, no, I cannot.

Q. You couldn't draw a line between predominantly democratic areas and predominantly Republican areas within the VTD, could you?

A. No, I could not.

Q. But we can draw a line between predominantly black areas and predominantly white areas; is that fair?

A. Yes.

[391] Q. Did you also—

JUDGE PAYNE: Excuse me. You do have the results of Democratic/Republican, for example, in each VTD.

THE WITNESS: Yes, but not within the VTD. That is, I don't know which census blocks have larger shares of Democrats and which census blocks have larger shares of Republicans. I have to assume that the share is the same across the entire VTD.

JUDGE PAYNE: But is that a logical assumption, that it's all concentrated across—in one place in every VTD?

THE WITNESS: We have no data to do it otherwise.

JUDGE PAYNE: You assume it because you have no data; is that what happens?

THE WITNESS: The standard assumption is to allocate the votes in proportion to population across the VTD.

Q. So the standard assumption then is that Democrats and Republicans are distributed evenly across the VTD?

A. Yes, in the same proportion as whatever the overall VTD vote shares were.

JUDGE PAYNE: But the standard assumption exists because you don't have data to show otherwise; is that what you are saying?

THE WITNESS: That's right.

JUDGE PAYNE: Thank you.

Q. Dr. Palmer, did you examine splits in political [392] subdivisions other than VTDs?

A. Yes.

Q. And what political subdivisions did you analyze?

A. I looked at a number of other places including incorporated towns, incorporated cities, a military base, and census places.

Q. Why did you look at these political subdivisions?

A. Respecting municipal boundaries is a traditional redistricting principle, and just as with VTDs, I was looking to see how these places were divided if they were divided.

Q. Did you draw any conclusions based on your examinations of cities, towns, and other municipality splits?

A. Yes. I identified 25 places including ten cities, four towns, one military base, and ten unincorporated places that were split between a challenged and a non-challenged district, and in almost all of them, the same pattern was evident as with the VTDs where areas of higher concentrations of black voting-age people were put into the challenged districts and areas of lower concentrations were put into the non-challenged districts.

Q. So you found the same pattern in all of the political subdivisions you analyzed as you did with VTDs.

A. Yes. There was one exception, and it was seven people total.

Q. Dr. Palmer, you also addressed the topic of population [393] shifts in your analysis of racial predominance. Can you tell me what the purpose of that analysis is?

A. This is another way of looking at racial predominance based on how populations are moved out of challenged districts and into challenged districts.

Q. And can you briefly summarize the analysis and conclusions that Dr. Ansolabehere provided this Court with respect to population shifts in the challenged districts?

A. Yes. Dr. Ansolabehere analyzed population flows between districts, and he did find evidence of racial differences in the areas moved in and out—

JUDGE PAYNE: Why are you summarizing what Ansolabehere did? That's there, and his testimony is there, and we're—it's part of the record. I don't know why he needs to summarize what's already in the record.

MS. KHANNA: Understood, Your Honor. I'm just trying to make sure he can distinguish what his analysis is that's different than Dr. Ansolabehere's.

JUDGE PAYNE: Why don't you just have him do what he did. If you want to draw the distinction, you can draw it different. We're just going to get things complicated if we don't keep it confined to the particular expert.

Q. Can you please the tell the Court, what analysis did you perform with respect to population shifts?

A. Yes. I looked at shifts between individual districts and [394] also looked at the shifts in aggregate. The main results are in tables 18 and 19, and what I do is, I look at the shares of population from the benchmark districts moved into and out of the challenged districts.

Q. Okay. So returning to tables 18 and 19 which are on page 62 of Plaintiff Exhibit 71 in your report, can you please describe, what does table 18 show?

A. Table 18 lists the 19 non-challenged districts that transferred population to one of the challenged districts under the enacted map, or one or more challenged districts under the enacted map.

Q. Did you draw any conclusions based on your analysis in table 18?

A. Yes. Let me just explain what the columns of table 18 are first. There's four different quantities calculated here. The first is the percentage of the population of these districts that is transferred to challenged districts.

The second is a percentage of the black voting-age population transferred out of these non-challenged districts to challenged districts.

The third column is the percentage of the white voting-age population transferred out of these districts to challenged districts, and the fourth column, an estimated percentage of Democratic votes moved out of these districts into challenged districts.

[395] Q. And did you draw any conclusions here?

A. Yes. Across all of the districts, with the exception of District 100, I observed the same pattern; that is, black voters are moved out of the non-challenged districts and into challenged districts at a higher rate than the population as a whole, at a higher rate than white voters are moved, and at a higher rate than Democratic voters are moved.

Q. Can we take a look at table 19 on the same page.

A. So this table has the exact same quantities except for the districts, the challenged districts that transferred population to non-challenged districts.

Q. What did you conclude based on this analysis?

A. This table shows the opposite pattern. That is, black voters are moved out at a lower rate than population as a whole. They're moved out to non-challenged districts at a lower rate than white voters

as a whole, and they're moved out at a lower rate than Democrats as a whole.

Q. Dr. Palmer, you also provided a race-versus-party analysis in your examination of racial predominance; is that right?

A. Yes.

Q. So what prompted that analysis?

A. In the previous trial, Dr. Ansolabehere presented several different analyses of race versus party in the assignment of VTDs to challenged districts. Dr. Katz disputed only one of these analyses but presented conflicting results, and I looked [396] at this analysis and tried to reconcile the differences between the two and come to a clear answer on this question.

Q. So you are focusing specifically on the regression model that both Dr. Ansolabehere and Dr. Katz looked at in 2015; is that right?

A. That's right.

Q. And what were the differences between Dr. Ansolabehere's and Dr. Katz's models for determining the predictive value of race versus party in VTD assignment?

A. There were two differences in the models. The first difference was that Dr. Ansolabehere weighted the observations which are VTDs in his models by population while Dr. Katz did not use weights, and the second difference is that Dr. Katz included 12 measures of distance in his models.

Q. Okay. So he raised two issues, population weights and the distance measure. I'm going to talk

first about population weights. Can you first explain what that means, weighting by population?

A. In a statistical model, we sometimes weight observations, and in this case each observation is a VTD in Virginia, to reflect that not every observation is equally important. And in this case, we weight by population to reflect that larger VTDs with more people have a larger effect on the result than smaller VTDs with fewer people.

And we want to reflect this for a few reasons. First, [397]when a large VTD is assigned to a district, more people are affected by that assignment than when a smaller VTD is assigned. And second, a larger VTD has a larger impact on the composition of its district when it's assigned than a smaller VTD.

Q. Okay. Can you please turn to table 20 in your report which is page 63. So, what does this table reflect generally?

A. This table shows regression results from five different models reflecting the impact of race versus party on the assignment of VTDs to challenged districts.

Q. Okay. So let's start with model one entitled Ansolabehere. What does this one show us about the predictive value of race versus party on VTD assignment?

JUDGE PAYNE: Excuse me. What do you mean by predictive value? What does that mean?

THE WITNESS: We're looking at the relationship between black voting-age percentage in the VTD, Democratic support in the VTD, between those two variables an assignment to challenged districts.

JUDGE PAYNE: What does predictive mean?

THE WITNESS: It means—

JUDGE PAYNE: What are you predicting?

THE WITNESS: We're trying predict whether a VTD is assigned to a challenged district or a non-challenged district.

JUDGE PAYNE: That's all. You're not trying to [398] predict the motivation for making the assignment?

THE WITNESS: We're trying to predict using this data.

JUDGE PAYNE: Predict the assignment, not the motivation for the assignment.

THE WITNESS: That's right.

JUDGE PAYNE: All right.

Q. Is it fair to say you're trying to predict the likelihood of a VTD being assigned to a challenged district based on either its racial composition or its Democratic performance?

A. Yes.

Q. Let's start with model one. Can you please explain what this model tells us.

A. This model replicates Dr. Ansolabehere's model from his original report but using the data that Dr. Katz used in his report, and I used Dr. Katz's data here, the entire analysis that were entirely consistent with each other. There's no differences due to different data sources or defining variables in different ways.

Q. What conclusions can be drawn from Dr. Ansolabehere's model here using Dr. Katz's date?

A. Dr. Ansolabehere finds a large and statistically significant effect of BVAP on VTD assignment to a challenged district. He finds no such effect on average Democratic vote share, and the difference between the effect of BVAP and the [399] effective vote of Democratic vote share is also positive and statistically significant.

What this means is that here, he finds evidence that race predominated over party in the assignment of VTDs to challenged districts, and there is no effect of party in this assignment—

JUDGE PAYNE: Slow down. I'm having trouble following you, if you don't mind.

Q. Can you repeat, what does that mean for model one?

A. It means that race predominated over party in the assignment of VTDs to challenged districts and that there was no effective party in the assignment of VTDs to challenged districts after accounting for the effect of race.

Q. Okay. Can we take a look at model two, and please describe what that is.

A. This is Dr. Katz's baseline model. It's the same model that he has in his original report.

Q. What does it include? What does that baseline reflect?

A. This has both of the differences from Dr. Ansolabehere's model. That is, it does not use population weights and includes 12 new measures of distance that Dr. Ansolabehere did not use.

Q. What does Dr. Katz conclude from his model?

A. Dr. Katz comes to a different conclusion than Dr. Ansolabehere. He finds that both race and party had positive [400] and statistically significant effects on the assignment of VTDs to challenged districts, and he does not find that there's no statistically significant difference between the effect. That is, he does not find that race predominates over party or that party predominates over race.

Q. Okay. Can you please go to model three. That one is entitled Katz Weighted. Can you explain what that model is?

A. Model three is Dr. Katz's model with the addition of his 12 distance measures but also with the population weights that Dr. Ansolabehere uses.

Q. So what conclusions can be derived from that model?

A. Here, we gets results that are very similar to Dr. Ansolabehere's original model. That is, there is a large positive and statistically significant relationship between BVAP and assignment of A VTD to a challenged district. There is no such relationship between Democratic vote share and assignment to a challenged district, and the difference between the effect of BVAP and the effect of the average Democratic vote share is positive and statistically significant.

Q. What does that mean?

A. What that means is that race predominated over party, and there is no effective party on VTD assignment.

Q. When Dr. Katz's model includes population weights, that's the conclusion that's derived?

JUDGE PAYNE: Why do you use Dr. Ansolabehere's [401] population figures in that, and what's the purpose of doing that? What are you trying to accomplish when you do that?

THE WITNESS: The purpose of population weights—

JUDGE PAYNE: No, in this analysis, not generally. Why are you using Ansolabehere's weights in what is column three here under Katz weighted? Why are you doing that?

THE WITNESS: I believe that is a correct way to estimate this model. That is, the weights play an important role in this calculation, and excluding them produces an incorrect result.

JUDGE PAYNE: Why did you choose Ansolabehere's weights instead doing your own or doing Katz's or finding them from somewhere else is what I'm trying to get ought.

THE WITNESS: So the weights are very simple. It's simply the population based on census data of each VTD. Calculating the weights is not sort of a part—there's no complexity to calculating the weights. It's simply the population. Weighting by population is a standard approach here and, I believe, the correct one.

JUDGE PAYNE: Thank you.

Q. Did Dr. Ansolabehere's model include weights by population?

A. Yes.

Q. Did Dr. Katz's model include weights by population?

A. No.

[402] Q. Did it include weights of any kind?

A. Not in his original report.

Q. So you've added just the population weighting to Dr. Katz's model here; is that right?

A. Yes.

Q. In model three.

A. Yes.

Q. Okay, you also mentioned the issue of including a distance measure in these models. Can you please explain the differences between Dr. Ansolabehere and Dr. Katz's models when it came respect to that distance measure?

A. Dr. Ansolabehere did not use any distance measure in his analysis. Dr. Katz argued that a distance measure was necessary here to theoretically add some context of the location of VTDs in relation to the challenged districts, and so what he did was he calculated—

Q. I'm going to stop there one second. I just want to make clear for the Court, so Dr. Ansolabehere's model included population weights. Dr. Katz's model did not include weights of any kind; is that right?

A. Yes.

Q. And Dr. Katz's model included a distance measure whereas Dr. Ansolabehere's model did not include any distance measure; is that right?

A. That's right.

[403] Q. And so—

JUDGE PAYNE: Before you proceed, would you tell us, refresh our recollection about what the

distance was that was used by Dr. Katz, the distance measure so we can understand your testimony?

THE WITNESS: Yes. Dr. Katz calculated 12 measures for every VTD. The distance between the centroid, that is the geographic center of each VTD, and the centroid, the geographic center of each of these benchmark districts. So he calculated how far each VTD was from each of the 12 benchmark districts.

Q. What was your assessment of those 12 measures of distance that Dr. Katz used?

A. Including all 12 measures produced inconsistent results in his model, and—because they're highly correlated. That is, as a VTD moves farther away from one benchmark district, it's also going to move farther away from other nearby benchmark districts. So when you look at the full results of Dr. Katz's original model, which I present in table 121, we see this inconsistent pattern.

Q. So I'm going to refer the Court to table 21 of your report which is on page 64 of Plaintiffs' Exhibit 71. So can you please explain what table 21 is.

A. Table 71 is Dr. Katz's model from his original report but includes the full results of the model. In addition to the variables we've already looked at, it includes the effects of [404] the 12 different distance measures listed here which are admitted from Dr. Katz's table in his original report.

Q. So you mentioned an inconsistency among these 12 distance measures. Can you explain what that is or where we'd find it?

A. Yes. We see it by looking across the coefficients, that is the number next to each distance measure for

the 12 districts. What we should expect is a negative relationship between distance and assignment to a challenged district.

That is, as a VTD gets farther away from a challenged district, it should be less likely to be assigned to it. We wouldn't expect a challenged district at the far west side of Virginia to be more likely to be assigned to a challenged district than one on the eastern side of Virginia. And so what we see if we look across these 12—

JUDGE PAYNE: Say that again. You didn't say anything about the distance. You said the direction. You are saying if it was on the western side, it wouldn't be a side. If it's on the eastern side, it would be. But, yet, I thought you were talking about direction. Would you help me clarify my misunderstanding?

THE WITNESS: Yes. As we move—given the location of these districts in the southeast of Virginia, as we move farther to the west, we're getting further away from all these districts, and the distance, therefore, is increasing between the VTD and the challenged districts.

[405] If we move from a VTD that's right next to one of the challenged districts to one far away, on the far side of the state, we would see a greater—the distance measures would increase.

JUDGE PAYNE: Did he do that in his report? I'm having trouble really understanding all of this. It kind of is beyond my kin, but I hear you saying that Dr. Katz assigned—criticizing his report because he assigned a distance that was way out of the district and all the way over on the western side of the state,

and I can't understand why that would be—why he would do that, but if he did it, I'd like to know if he did. Or are you just saying there's an incremental distance to the west or the east?

THE WITNESS: He measures the distance accurately between every VTD across the entire state of Virginia and each of the 12 challenged districts. So a VTD that's far to the west in Virginia will have a greater distance to one of the challenged districts than a VTD that's on, say, the East Coast of Virginia.

JUDGE PAYNE: And what function does the—in the analysis does the distance between the VTD in the western part of Virginia have to do with anything in the challenged district?

THE WITNESS: Dr. Katz argues these 12 measures of distance are critical to estimating the model properly, and I [406] disagree with that.

Q. So your understanding is that a proper distance measure would take into account or would reflect that a VTD farther from a challenged district would be less likely to be included in that challenged district; is that right?

A. That's right.

Q. And do Dr. Katz's 12 distance measures reflect that?

A. No, they do not.

Q. Tell me in what way are they inconsistent on that scale?

A. Some of his distance measures show a strong negative relationship between distance and the likelihood of assignment to a challenged district, and

that's what we should expect. As you get farther away, you're less likely to be assigned to a challenged district.

But other measures for some of the other districts show a strong positive relationship between distance and VTD assignment. That is, the likelihood of being assigned to a challenged district increases with distance using some of these 12 distance measures but not others. That would produce inconsistent predictions, inconsistent results from the model.

JUDGE PAYNE: Wouldn't you need to know what the distances were to make that judgment as to whether or not it was really inconsistent with the model?

THE WITNESS: Yes, and we have those distances in the data. So if you were to use the model to make predictions, you [407] find in some cases being further away increased the likelihood of being assigned to a challenged district.

Q. So you mentioned there an inconsistency in the 12 distance measures that Dr. Katz used to determine his model of race-versus-party prediction in the assignment of VTDs; is that right?

A Yes.

Q. Why would that inconsistency be a problem?

A. They make inconsistent predictions, and so we shouldn't rely or trust that model.

Q. Did you do anything to address that problem in developing your own race-versus-party analysis?

A. Yes. I offered a much simpler measure of distance.

Q. What measure of distance did you offer?

A. I propose adding just the distance to the closest challenged district. That is, instead of measuring 12 distances for every single VTD, we just measure how far away it is from the closest challenged district.

In other words, if we take all of Dr. Katz's 12 variables, it's just the minimum value of those 12, whichever one is closest, for each VTD.

Q. I'm going to ask you to turn back to page 63, table 20. So I'm looking now at model four. This one entitled "Closest." Can you explain what this model is?

A. So closest reflects a model that uses this alternative [408] distance measure I just mentioned. This is an unweighted model. That is, it uses the Katz baseline model without weights, but instead of using 12 different measures of distance, it just uses one, the distance to the closest challenged district.

Q. What do you conclude from this model?

A. Based on this model, there is a strong positive and statistically significant relationship between race and assignment VTDs to challenged districts. There is no relationship between party and VTD assignment, and if you look at the coefficient on the distance to closest challenged district, we find a negative and statistically significant relationship there which is what we should expect. As VTDs move farther away from challenged districts, they're less likely to be assigned to them.

Q. So can you explain in kind of more layman's terms, what does that mean with respect to the coefficients of BVAP and Democratic vote share?

A. Race predominates over party, and there is no affected party.

Q. And take a look at model five in table 20. This one is entitled "Closest Weighted." Can you explain what this model is.

A. This model uses that closest distance measure once again but also the proper population weights.

[409] JUDGE PAYNE: Did you apply this model to a real situation, or did you ever do that? Did you apply the model to what really happened on the ground in any particular district?

THE WITNESS: The model is—

JUDGE PAYNE: In other words, did you look at whether or not in a particular challenged district, the model is borne out by the assignment of the precinct—of the VTD to where it was assigned or was not borne out?

THE WITNESS: The model is based on those actual assignments.

JUDGE PAYNE: Did you go back and double-check it backwards is what I was trying to say. You assume something and then made the figure, as I understand it. You made your calculations, and I'm asking whether you went back and checked those calculations.

THE WITNESS: Um, I'm not quite understanding—

JUDGE PAYNE: Let's suppose that the testimony is that politics was the reason for putting some VTDs where they were; all right?

THE WITNESS: Okay.

THE COURT: The record says that. Let's suppose that. Did you take your model and go back and see whether or not the conclusion you drew on the basis of the model that race predominated, not party, and measure it to the testimony that party predominated in the decision? Did you do that [410] comparison?

THE WITNESS: No.

JUDGE PAYNE: Okay, thank you.

Q. Dr. Palmer, is any part of your analysis a response to any of the fact witness testimony provided in the course of this trial or the 2015 trial?

A. No.

Q. Does it take into consideration any particular reasons that might be offered for drawing of any particular districts?

A. No.

Q. Now, your models here, are those kind of theoretical models based on theoretical data?

A. No.

Q. What are they based on? What are the inputs to this model?

A. They are statistical models based on actual real data about these VTDs.

Q. So this is based on the actual enacted map and the lines as drawn; is that right?

A. Yes. The variable we're predicting, whether a VTD is assigned to a challenged district, is based on the actual VTD assignments, and then race and party are measured using actual data at the VTD level.

Q. And that's true for both your models and for Dr. Katz's models, Dr. Ansolabehere's models, you're all looking at the [411] enacted map in the districts as drawn?

A. Yes. Dr. Katz and I are using the exact same data set.

Q. So can you explain to me what you conclude from model five? Let's go back to that close-up there on table 20. If I understand correctly, model five is essentially Dr. Katz's model with the inclusion of population weights, as we've already discussed, and the inclusion of your preferred distance measure; is that right?

A. Yes.

Q. And what does model five tell us when Dr. Katz's model is

adjusted in those ways?

A. That race predominated over party, that there is no relationship between party and assignment of VTDs to challenged districts after accounting for these other factors.

JUDGE PAYNE: What other factors?

THE WITNESS: Accounting for—there was no relationship with party after accounting for race and distance to the closest challenged district.

JUDGE PAYNE: So you were comparing just race and party, but you said taking into account these other factors, and I'm trying to figure out what other factors you meant in that testimony.

THE WITNESS: I'm sorry. In this particular model, the other factor is distance to the closest

challenged district. We're also controlling all the models for whether [412] the VTD was in a challenged district under the benchmark map.

Q. So then is it fair to say that under model five, which is Dr. Katz's model, with population weights included and with your preferred distance measure included, we see results that are similar to Dr. Ansolabehere's model reflected in model one?

A. Yes, that's correct.

Q. And how would you characterize those results?

A. The model one and five both show that race predominated over party. There's a strong positive statistically significant relationship between race and party. No such—I'm sorry, between race and VTD assignment, no such relationship between party and VTD assignment, and the effect—the difference between the effect of race and the effect of party is positive and statistically significant.

Q. In both—in that model five, race is more predictive than party of a VTD's inclusion in the challenged district; is that fair to say?

A. Yes.

Q. So what conclusions did you draw from table 20 as a whole, stepping back a little bit?

A. Overall, the conclusion I draw is that race predominated over party in the assignment of VTDs to the challenged districts.

Q. And what about with respect to Dr. Katz's original race-versus-party model, any conclusions that you drew there—

[413] JUDGE PAYNE: We've already been there now, counsel. We've already been there. You're re-plowing all the old ground. You started off with this, and now you are concluding with it. We heard it the first time. I think if you're finished, say so, and we'll proceed. Don't re-plow old ground, please.

Q. Dr. Palmer, this race-versus-party analysis that you provide in table 20, does it purport to evaluate the extent to which race predominated over any factor other than party?

A. No. This particular analysis is constrained to just the effects of race versus party.

Q. Are there any other places in your report where you examine factors other than party and the extent to which race predominated over those factors?

A. Yes. In the previous sections of the report we already discussed, we talked about how race predominated there.

Q. So just to clarify, this is one of several analyses that you provide about racial predominance; is that right?

A. That's right.

Q. I want to move on to the last section of your report which is regarding the 55 percent BVAP floor. What is the purpose of your analysis here?

A. The purpose of this analysis was to analyze—

JUDGE ALLEN: I'm sorry, what page?

MS. KHANNA: I'm not referring to any page in [414] particular, but I think that the last section of his report begins—

JUDGE PAYNE: Section six, is that the last section,

the district demographic comparisons, or what?

THE WITNESS: Page 24.

JUDGE PAYNE: Page what?

THE WITNESS: 24.

JUDGE ALLEN: Thank you.

MS. KHANNA: This is a section entitled "Evaluating the 55 Percent BVAP Threshold." When I said last section, I was referring to the last section of his initial report.

Q. So, Dr. Palmer, what was the purpose of this analysis?

A. The purpose of this analysis was to analyze the 55 percent BVAP threshold to see if it was necessary to create districts where African Americans were able to elect their candidates of choice.

Q. Where did you first hear of the 55 percent BVAP threshold in relation to the challenged districts?

A. I believe in the Court opinion from 2015.

Q. And what type of analysis did you conduct to evaluate the necessity of the 55 percent BVAP threshold in the challenged districts?

A. I started with a racially polarized voting analysis, and then I also did a few other analyses to look at the necessity of the 55 percent BVAP.

[415] Q. What is a racially polarized voting pole?

A. A racially polarized voting analysis is an analysis designed to measure the voting patterns for

different candidates across racial groups. It is, we can't actually observe how individuals vote. We don't get to see it, see how people vote, and so we try to detect different patterns across racial groups using a statistical model.

Q. What methodology did you use to conduct your racially polarized voting analysis?

A. I used ecological inference.

Q. And why did you use ecological inference?

A. The Court asked for it in the 2015 opinion.

Q. The Court ask for an ecological inference analysis?

A. The Court preferred it in the 2015 opinion. Also, using ecological inference here is entirely consistent with Dr. Katz's approach in the previous trial.

Q. So there was a question about the use of ecological regression or ecological inference in the last round, and Dr. Katz preferred ecological inference; is that right?

A. Yes.

Q. And you also use logical inference in your analysis; is that right?

A. Yes.

Q. And the reason you did so is just to eliminate the dispute about methodologies; is that right?

[416] A. That's right. There's no difference in our methological approaches to measuring racially polarized voting.

Q. What elections did you choose to incorporate into your racially polarized voting analysis?

A. I used two state-wide elections, the 2008 presidential election and the 2009 gubernatorial election. I also averaged the results of those two elections together.

Q. Why did you choose those two elections?

A. I chose them for several reasons. First, they were used by Dr. Katz in other parts of his original report. Second, they are the most recent state-wide elections available at the time of the redistricting, and, third, they allow for availability of analysis across all 12 districts. If we rely only on House-of-Delegate elections, then there's several districts where we just can't say or learn anything.

Q. So do you perform any analysis to determine the—whether there's a correlation between House-of-Delegates elections and the state-wide elections that you examined?

A. Yes. I looked at the relationship between state-wide elections and House-of-Delegate elections and found that there's a strong predictive relationship between the two.

Q. So please turn to page 47, figure 19 of your report.

JUDGE PAYNE: You are saying that state-wide results are a good predictor of individual district elections; is that what you are saying?

[417] THE WITNESS: Yes.

Q. What does figure 19 reflect?

A. Figure 19 shows the correlation between state-wide election results and House-of-Delegate election results for the districts where we have House-of-Delegate elections.

Q. What did you conclude based on figure 19?

A. There is a strong positive linear relationship between state-wide elections and House-of-Delegate elections. That is, state-wide elections serve as a good proxy and are highly predictive of House-of-Delegate election results.

Q. Okay, Dr. Palmer, can you briefly describe how you set up your ecological inference models? What were the variables that you used?

A. So the ecological inference models try to predict district-level—try to predict shares of the two-party vote, that is what share of the vote is earned by Democratic candidates and by Republican candidates as a function of the demographics within each VTD, and so the demographic variables I looked at were the share of the VTD of black voting-age population, white voting-age population, and then all other groups combined as a third group labeled other.

Q. And when it came to determining Democratic—or the election performance for each of these racial groups, what variables did you use there?

A. The Democratic and Republican shares of the two-party [418] vote.

Q. Why did you choose to set up your ecological inference analysis in this way?

A. This is the exact way that Dr. Katz set it up in his original report which, I believe, is correct, and by

doing it this way, we're also entirely consistent with one another.

JUDGE PAYNE: What page is this on?

MS. KHANNA: You mean figure 19?

JUDGE PAYNE: Yes.

MS. KHANNA: Figure 19 is on page 47. We were—we've moved on from this discussion of figure 19. We can take that off the screen so it's not misleading. I think the question I had just posed was about the ecological inference model that Dr. Palmer used generally to assess racially polarized voting.

Q. And, Dr. Palmer, if I understand your testimony correctly, you set up your ecological inference model the same way Dr. Katz set up his ecological inference model from his 2015 report; is that right?

A. That's right.

Q. You did that to, again, to eliminate any dispute about methodology here?

A. That's right.

Q. Can you please turn to table 23 of your report which is on page 66. Does table 23 reflect your ecological inference [419] analysis of racial voting patterns in each of the challenged districts?

A. Yes.

Q. So I see a column marked 95 percent CI. Can you please explain what that is.

A. Yes. 95 percent CI means the 95 percent confidence interval, and a confidence interval is a measure of uncertainty in the estimates. And so what the confidence interval says is that we are 95 percent

certain that the true level of support for a particular group of the Democratic candidate is between those two numbers in the interval.

So, for example, if we just look at the very top row here under 2008 president, we see an estimate that African Americans voted for the Democratic candidate 95 percent of the time.

Q. In District 63; right?

A. In District 63. That is 95 percent of African Americans voted for the Democratic candidate, but we don't know that number with perfect precision because we have to estimate it using census data and election returns. And so the 95 percent confidence interval says we are 95 percent certain that the true value of African-American support for the Democratic candidate is between 88 percent and 99 percent.

Q. So are confidence intervals important to the analysis?

A. They're critical to the analysis. Every statistical analysis has some margin of error, some degree of uncertainty, [420] and it's important to report the—an appropriate measure of uncertainty with the estimates.

Q. Okay. So table 23 is your racially polarized voting analysis using those two elections that we discussed in each of the 12 challenged districts; is that right?

A. Yes, as well as the average of the presidential and gubernatorial elections.

Q. I'd like to turn to figure 22 of your report which is on page 49. What does this figure reflect?

A. This figure plots the results from the last columns of table 23, the ecological inference results using the average of the 2008 presidential and 2009 gubernatorial elections. Each circle represents the point estimates; the filled circles the point estimates for blacks and the open circles the point estimates for whites. Then the line going through the circles represent the confidence interval, the upper and lower bound of the 95 percent confidence intervals.

Q. So figure 22 is just a graphical representation of the last column in table 23; is that right?

A. That's right.

Q. Or the last assessment of the two elections combined; is that right?

A. Yes.

Q. And so were you able to draw any conclusions—based on your analysis in table 23 in figure 22, were you able to draw [421] any conclusions about African-American voting patterns in the challenged districts?

A. Yes.

Q. What did you conclude?

A. I concluded that African Americans supported Democratic candidates at very high levels across all 12 challenged districts.

Q. And how would you define "very high levels"?

A. They average 95 percent.

Q. Why is that important?

A. This is very important because it lets us clearly establish that there are—there is a clear African-American candidate of choice across all 12 districts.

Q. So based on your analysis in table 23 and figure 22, were you able to draw any conclusions about white voting patterns in the challenged districts?

A. Yes. Unlike African Americans which are consistently supporting Democratic candidates at very high levels, there is significant variation among support for Democratic candidates by white voters. District 75 has the lowest level of support. Around 16 percent of white voters in District 75 are estimated to support Democratic candidates. District 71 has the highest level of support among white voters estimated at 70 percent of white voters supporting the Democratic candidates.

JUDGE PAYNE: Are you talking about now in these [422] particular districts?

THE WITNESS: Yes. Each set of points on the figure is a separate district.

JUDGE PAYNE: In the challenged districts?

THE WITNESS: Among the challenged districts, yes.

JUDGE PAYNE: So—all right. Thank you.

Q. And the challenged districts are listed on the bottom on the X axis; is that right?

A. Yes.

Q. And so this figure allows—figure 22 allows us to examine variations in white—the white vote share for the minority-preferred candidate across each of the 12 challenged districts; is that right?

A. Yes.

Q. And as I believe you just testified, you said that the figure 22, table 23 reflect significant variation

between the 12 challenged districts when it comes to white support for the African-American preferred candidate; is that right?

A. That's right. In some districts, we see high levels of white support for the African-American preferred candidate. In other districts it's lower, and in some it's split roughly 50/50 between the two parties.

JUDGE PAYNE: This is just Democratic vote.

THE WITNESS: Yes.

JUDGE PAYNE: Doesn't reflect Republican support.

[423] THE WITNESS: Republican support would just be sort of flipping this.

JUDGE PAYNE: I understand. I'm talking about the depiction is of the Democratic vote.

THE WITNESS: That's right.

JUDGE PAYNE: Of the chart, figure 22; right?

THE WITNESS: Yes. The axis is the Democratic share of the two-party vote.

Q. Dr. Palmer, does the racially polarized voting analysis that we just discussed that's reflected in figure 22 and table 23, does that give you the information that you would need to determine whether a 55 percent black voting-age population was required in any given district?

A. No. It's an important first step.

Q. So does a district that has racially polarized voting necessitate automatically a 55 percent black voting-age population in order to elect the minority-preferred candidate?

A. No.

Q. How would you determine whether a district required a 55 percent black voting-age population in order to elect minority-preferred candidates?

A. So I looked at this in two different ways, and if we start at table 22.

Q. So turning to table 22, that's page 65 of your report. What does this table tell us?

[424] A. The important things for this analysis here are the last two columns of table 22 which show us Democratic vote shares under the benchmark and enacted plans for each district using the average of the 2008 and 2009 elections.

What this shows us is that African-American preferred candidates are winning these elections by very large margins.

Q. Would you define "very large margins"?

A. The most competitive district under either plan of District 75 were African-American preferred candidates are winning 56 percent of the vote, a 12 percent margin.

Q. What's the next most competitive after District 75?

JUDGE PAYNE: What column are you looking at to tell

us that?

THE WITNESS: The last two columns both show

56 percent for District 75.

Q. The next most competitive district after that?

A. District 63.

Q. What is that, the Democratic vote share in the benchmark District 63?

A. Under the benchmark, the vote share was 62.9 percent.

Q. What's the vote margin there?

A. About 26 percent.

Q. So if I'm looking at those last two columns of table 22, African-American preferred candidates are winning by large margins in all of the challenged districts under the benchmark [425] plan; is that right?

A. Yes.

Q. And the most competitive district for African-American preferred candidates is District 75.

A. That's right.

Q. What additional analysis did you perform to determine the necessity of the 55 percent BVAP floor in any challenged districts?

A. I did two difference analyses, and if we start on table 24.

Q. Table 24 on page 67 of your report?

A. Yes.

Q. What does this table show?

A. This table shows a very simple analysis using the hypothetical case where suppose we take—we make up the shortfall, the population shortfall in the—under the benchmark maps. We calculate the population shortfall to achieve equal population and make it up with a hypothetical population exclusively

of voters who vote unanimously against the African-American preferred candidate.

Now, we know this population doesn't actually exist in [426] real life. We can't actually find a pocket of people of the right size that's completely unanimously against the African-American preferred candidate, but suppose we could. That's sort of the biggest shock you could make to the partisan composition of the district, and what I do is I calculate how many voters that would be and then calculate the estimated vote share for the African-American preferred candidate if those people were added to the district.

And what I find is that in every single challenged district except District 75, African-American preferred candidates would still win with large margins.

Q. So what did you conclude from table 24?

A. What table 24 shows us is it was not necessary to increase the African-American voting-age populations in any of the challenged districts for them to continue as districts that would safely elect African-American preferred candidates.

Q. To make sure I'm reading it correctly, many of the challenged districts fell short on population; is that right?

A. Yes.

Q. They needed to add significant numbers of people in order to achieve population equality?

A. That's right.

Q. And this table assumes that all of those people added were voting unanimously against African-American preferred candidates; right?

[427] A. Yes.

Q. And even in that extreme hypothetical, African-American preferred candidates are winning by large margins in all the challenged districts except for District 75; is that right?

A. That's right.

Q. Was there any other analysis that you performed in order to examine whether a 55 percent black voting-age population was necessary in any of the challenged districts?

A. Yes. There's one more analysis on table 25.

Q. Let's turn there to page 68, table 25. What does table 25 reflect?

A. Table 25 shows an analysis that's informed by the ecological inference estimates. So what I do here, I say, suppose a district were drawn at three different hypothetical levels of BVAP; 45 percent BVAP, 50 percent BVAP, or 55 percent BVAP. I say, suppose that the African-American voting-age population share is set at one of these three levels.

Then I hold the other—the size of the other population constant and calculate what would be the size of the white voting-age population necessary to now reach 100 percent. So, for example, hypothetically, if we're saying a district is 45 percent BVAP and that district, say, has five percent other, it would have to have 50 percent white voting-age population.

So I first figure out the size of those three groups, and then I multiple the size of those three groups by the rates at [428] which they vote for African-American preferred candidates based on the ecological inference results. What this produces is an estimate of what the vote share would be for the African-American preferred candidate in the hypothetical world where the district was drawn at one of these three levels of BVAP.

Q. Did you draw any conclusions based on your analysis in table 25?

A. Yes. At 50 percent BVAP, African-American preferred candidates are winning by comfortable margins, and at 45 percent BVAP, African-American preferred candidates are winning everywhere except potentially in District 75 where the lower bound of the confidence interval on this estimate is just below 50 percent.

Q. What did you conclude about the necessity of the black voting—55 percent black voting-age population based on your analysis in table 25?

A. That the 55 percent BVAP threshold was not necessary to create districts that would continue to elect African-American preferred candidates by large margins.

JUDGE PAYNE: Do either one of these three methods that you just described include an analysis of turnout in the districts?

THE WITNESS: No.

JUDGE PAYNE: So you don't know what the actual vote [429] was of African-American voters in the district.

THE WITNESS: Actual information of turnout by race?

JUDGE PAYNE: Yes. How many African Americans, how many Caucasians actually voted in a particular district. Did you do that?

THE WITNESS: In this report, I did not. I did do an analysis of turnout in my reply report.

JUDGE PAYNE: We're not there yet, and we won't get there until somebody testifies that calls your reply report to get into evidence, will we? We're not going through his reply report in anticipation of what the other people are going to say, are we?

MS. KHANNA: I had no intention to do so, Your Honor. You asked the question about turnout. That is listed in his reply report. For the record, both his initial report, Plaintiffs' Exhibit 71, and his reply report, Plaintiffs' Exhibit 72, are in the record. They were moved into the record at the beginning of trial.

THE COURT: I know that.

Q. So, Dr. Palmer, I'm not sure where we left on. Can you tell me your conclusions on table 25 generally.

A. That the 55 percent BVAP threshold was not necessary for these districts to continue electing African-American preferred candidates by safe margins.

Q. So is it your opinion, Dr. Palmer, that each of the [430] challenged districts should have been drawn at 45 percent black voting-age population?

A. No.

Q. Or that they each should have been drawn at 50 percent black voting-age population?

A. No. This analysis is not intended to suggest that the BVAP of the challenged districts should have been drawn at 45 or at 50 percent. It's not trying to find some minimum value here. I don't solve for the minimum value of BVAP necessary for these districts to continue electing African-American preferred candidates.

What this analysis does show, there's a wide range of levels of BVAP where these districts would continue to be performing that could be significantly lower than 55 percent.

Q. When you say performing, you mean performing for the African-American preferred candidates; is that right?

A. That's right. Places where the African-American preferred candidates could win by comfortable margins.

Q. So going back, Dr. Palmer, and we can take this from the screen, you were asked to examine racial predominance in the drawing of the challenged districts. Can you please summarize your opinions for the Court on that issue.

A. Yes. Across three different analyses of racial predominance, I found consistent evidence—I found consistent evidence of racial predominance. First, looking at split [431] geographies, including VTDs, towns, cities, places, and a military base, I found evidence that places were divided by a race such that areas of higher concentrations of African Americans were in the challenged districts.

Second, looking at population flows between challenged and non-challenged districts, I found

consistent evidence that African Americans were moved into challenged districts at higher rates than the rest of the population and were moved out of challenged districts at lower rates than the rest of the population, and then, third, I looked at race versus party in the assignment of VTDs and found that race predominated over party in predicting which VTDs were assigned to challenged districts.

THE COURT: That's the third time we've heard that; once in his opening, once in each one of the questions that he was asked, and once in the summary. We do not need to have it—I think we're paying attention. We don't need it three times. We're not in the Army.

MS. KHANNA: Thank you, Your Honor, and thank you. I have no further questions.

THE COURT: We'll take 45 minutes for lunch.

(Luncheon recess.)

[432] JUDGE PAYNE: All right. Ms. McKnight.

MS. MCKNIGHT: Thank you, Your Honors.

CROSS-EXAMINATION

BY MS. MCKNIGHT:

Q. And good afternoon, Dr. Palmer.

A. Good afternoon.

Q. We met at your deposition. It's nice to see you again. I'm Kate McKnight. I'm with defendant-intervenors, and I'll ask you some questions today.

Dr. Palmer, you earned your Ph.D. three years ago; is that right?

A. Yes.

Q. And have you ever worked with the legislature to help it draft and pass a redistricting plan?

A. No.

Q. And have you ever worked with individual legislators or even a caucus to help them draft and pass a redistricting plan?

A. No.

Q. And you've never drafted a plan that was adopted by any state, correct?

A. Correct.

Q. And you've never drafted a legislative plan that was submitted to any state, correct?

[433] A. Correct.

Q. And you've never advised a state going through the map drawing process; is that right?

A. That's right.

Q. Have you ever spoken with legislative map drawers about the map drawing process?

A. No.

Q. Now, in preparing your reports in this matter, you did not interview any Virginia house members, did you?

A. No.

Q. You did not interview any Virginia elected officials?

A. No.

Q. And you did not interview any legislative staff in Virginia; is that right?

A. That's right.

Q. Now, when you prepared your report, you did not know how much time the Virginia legislature had to draft and pass HB 5005; is that right?

A. That's right.

Q. And when you prepared your report, you did not know that Virginia was subject to the Section 5 preclearance requirement; isn't that right?

A. That's right.

Q. And you didn't know what happened to the plan after it was signed by the governor; is that right?

[434] A. That's right.

Q. Now, prior to your trip for this case, you've never been to Richmond before; is that right?

A. That's right.

Q. And you've never been to southeastern Virginia before; is that right?

A. That's right.

Q. Now, your report for this matter, you worked on it for roughly between June and early August, and then you had two weeks in August for your reply report. Is that fair?

A. Yes. I began in late June.

Q. And now, you believe that the types of analyses a map drawer could perform in advance of passing plans could depend on time; meaning with more time, one could do more analyses; is that correct?

A. Yes.

Q. Okay. Now, turning to your VTD split analysis, I'd like to start by drawing the Courts' attention to pages 31 and 39 of your initial report. I believe that's

PX 71. And now, in this span of pages between 31 and 39, you show a series of maps; is that right?

A. Yes.

Q. Now, how did you select the maps to be shown?

A. These maps are just meant to be illustrative of some [435] of the VTD splits. And the purpose of the tables later on in the report are to document all the different VTD splits.

Q. I see. And I counted, and it looks like of the 19 maps you show here, 9 are unrelated to any districts currently challenged; is that correct?

A. I haven't counted, but that seems plausible.

Q. Okay. So, in other words, nine of your maps illustrate splits with HD 75 and no other challenged district, correct?

A. Yes.

Q. And while we're on this topic, could you turn to page 52 of your report? Now, in looking at this table, it looks to me as though 8 out of the 12 divisions identified in this table relate to HD 75 and no other challenged districts; is that correct?

A. Yes.

Q. Okay. So even though the title says "challenged," you understand that HD 75 is no longer challenged in this case; is that right?

A. I do.

Q. Okay. Could you turn to page 32 of your report, please? Now, plaintiffs have alleged that your analysis supports a finding that race predominated in the division of certain VTDs at the census block level. Now, in [436] looking at the image for District 69 on

page 32 of your report, your analysis of these divisions does not explain why some lower BVAP census blocks are included in the challenged district; isn't that right?

A. That's not quite right. The shading on these maps is not showing the BVAP percentage of each census block. The shading on the maps shows the concentration of black voting age people within the VTD.

And so what we can't say is we can't look at the light green blocks, say, in 69 in the middle of the map and say anything about the racial composition of those blocks other than that not that many black people live within these blocks.

JUDGE PAYNE: Does that mean by not that many?

THE WITNESS: A relatively small share, roughly, say, 1 percent, of the black voting age population of the VTD resides in each of those blocks, roughly. What it doesn't show us is how many white people, for example, live in those blocks. They could be very sparsely populated or they could be densely populated. This particular map does not show us that.

Q. Thank you for that explanation. I think I was asking a slightly different question. Let me frame it a little differently for you. In the color coded scale at the bottom of your map, the lighter color, the lighter color [437] green, what is that labeled in your scale?

A. Lower BVAP.

Q. Okay. So when you see those lighter colors used in these census blocks, your analysis of these divisions does not explain why some of these lower BVAP

census blocks are included in the challenged districts; is that right?

A. No. We're, again, using BVAP in two different ways. As the caption on my figure states, each census block is shaded based on the share of the black voting age population—

Q. Dr. Palmer, pardon me. I don't like interrupting people, but the judges have put this duty on me to keep it tight. I think you've already provided that information to the Court.

What I'm asking here—and if you give me a moment, I can make sure we're on the same page. Let me ask you slightly differently, Dr. Palmer. Is it your position that race predominated in the division of District 69 between 68 and 69?

A. It is my position that the effect of the way the line was drawn was to divide this VTD by race.

JUDGE PAYNE: Why don't you ask your question again, and if you would answer it yes or no this time, then we'll understand what your position is on what she asked.

[438] Q. Now, your analysis of these divisions does not explain why some lower BVAP census blocks are included in the challenged district; isn't that right?

A. That's right.

Q. And if you turn to page 38 of your report, similarly, your analysis of these districts does not explain why some higher BVAP census blocks are excluded from challenged districts; isn't that right?

A. Yes.

Q. While we're on the topic, I'd like to look at both pages 32 and 35 of your report. This kind of discussed the scale coloring in your maps earlier. And if you look at page 35 of your report, here the scale color for 4.5 percent as higher BVAP is the same color as higher BVAP in the map on page 32; isn't that right?

A. Yes.

Q. Even though the percentage is different?

A. That's right.

Q. Okay. Going back to your analysis, your analysis does not take into account when VTDs have been divided among major thoroughfares; isn't that right?

A. Yes.

Q. And your analysis does not take into account when these divisions were made along rivers; isn't that right?

A. That's right.

[439] Q. And your analysis does not take into account when a VTD was divided at the direction of a local delegate; isn't that right?

A. Yes.

Q. Now, we heard testimony yesterday that local delegates suggested the splits in VTDs 505 and 703, and your analysis could not have taken those requests into request, correct?

A. Correct.

Q. And your analysis does not take into account when a VTD was divided related to incumbent residency; is that right?

A. That's right.

Q. So as an example—

MS. MCKNIGHT: Could we pull up Defendant-Intervenors' Exhibit 94, page 4?

Q. Dr. Palmer, I'd like to direct your attention to two VTDs here. One is 505. I've put a red dot under it. And the other is 504, and I'll put a red dot beside it. Now, your reading of this map, are these the only two precincts, VTDs, that are shared between 69 and 71?

A. 505 and—

Q.—and 504.

A. 504 I have as split between 69 and 71. I think 504 might be one of those unpopulated splits.

[440] Q. So my question was isn't it correct that the only two VTDs shared between HD 69 and HD 71 are VTD 504 and VTD 505?

A. Yes.

Q. Okay. And you testified earlier today that often VTDs need to be split between bordering districts. Is that a fair representation of what you testified?

A. Yes. A VTD may need to be split to achieve equal population.

Q. And so if a map drawer were selecting between 505 and 504 to split between 69 and 71 and they decided not to split 504 because Betsy B. Carr lives on the border between 504 at that blue asterisk and the border of 71, your analysis would not pick up that decision; isn't that right?

A. That's right.

Q. Okay. And your analysis does not take into account when a VTD was divided for purposes of core preservation, correct?

A. Correct.

Q. And now, aside from looking at cities, towns and census designated places, your analysis does not take into account when a VTD was divided to preserve communities of interest; isn't that right?

A. Yes.

[441] Q. So if Senator McClellan testified yesterday that VTD 703 was split in a manner to preserve a community of interest, your analysis would not have reflected that justification; isn't that right?

A. Presumably, the district didn't need to be split to preserve the community of interest within that VTD.

JUDGE PAYNE: Is it right or not that your analysis doesn't pick that question up, though, I think was the question.

A. That's right.

Q. Now, your report finds that at the time of redistricting, all of the districts except HD 75 would be performing majority minority districts at 50 percent BVAP, correct?

A. It also shows that District 75 would be performing at 50 percent BVAP.

Q. Okay.

JUDGE PAYNE: I think her question was challenged districts, and 75 isn't challenged anymore. So can—is she correct as to the challenged districts?

A. Yes.

Q. And now, you based this assessment on an average of two elections, including the 2008 presidential election and 2008 gubernatorial election; is that right?

A. Yes.

[442] Q. Now, I heard you testify earlier that 55 percent BVAP was not necessary for the challenged districts to continue, you said. You said that a number of times, to continue being performing majority minority districts, correct?

A. Yes.

Q. Okay. But you did not analyze whether the challenged districts would continue to be performing minority districts throughout the decade at the 50 percent BVAP level; isn't that right?

A. That's correct. I did not do any demographic forecasting.

JUDGE PAYNE: I didn't hear you.

THE WITNESS: I do not do any sort of demographic forecasting.

Q. So how can you opine about whether these districts could continue being effective majority minority districts through the decade?

A. I didn't offer an opinion on that. When I said "continue," what I meant was under the benchmark map, they were performing and they would continue to be performing under the enacted map; that if—the switch from one plan to another would not change the status of any of these districts with regards to their ability to elect African-American preferred candidates.

[443] Q. So you have no opinion about how long into the future your estimate could stand and these districts could remain performing majority minority districts; isn't that right?

A. That's correct. In my report, I have some evidence that speaks towards this question.

Q. And you don't know what you would have advised a legislature, the Virginia legislature, as to how much BVAP would be needed to avoid retrogression, correct?

A. That's right.

Q. And you agree that there is no technique or science to find a precise point at which a given district tips from being a performing majority minority district to one in which the minority community cannot elect its candidate of choice, correct?

A. I'm sorry. Can you repeat the question?

Q. Absolutely. And you agree that there is no technique or science to find a precise point at which a given district tips from being a performing majority minority district to one in which the minority community cannot elect its candidate of choice, correct?

A. I agree that there is no technique to find a precise point, but that does not mean that we can't find a range where it can continue to perform.

Q. Okay. And I'll ask you some questions about that later. So I understand that you do agree to that point [444] for now.

And you agree that at best, regression analysis provides estimates of voting preferences surrounded

by margins of error and always based on data containing acknowledged errors, correct?

A. Yes.

Q. And you agree that there are errors in the census data, right?

A. We treat the census data here as correct, but there are likely errors in the collection of census data.

Q. And you agree that even contemporaneous regression analysis based on the census will have a built-in error in the independent variable; isn't that right?

A. Yes.

Q. And you agree that that inaccuracy only grows over the course of the decade, correct?

A. Well, the census data is counting at a set point in time. And so as people change over time, we should see differences from the census data.

JUDGE PAYNE: Is that yes or no that you agree with her?

A. Yes. Because demographics have to change over time, or can change over time.

Q. And pardon me because you're hedging your answer a bit, and I was not talking about demographic shifts. I [445] was asking about errors in data and whether they would continue to grow. And so if you don't mind, let me reread my question.

And you agree that the inaccuracy only grows over the course of a decade, correct?

A. I'm sorry. I don't understand the question.

Q. Okay.

A. Are you—

Q. I'll try to rephrase. You testified that you agreed that even contemporaneous regression analyses based on the census will have a built-in error in the independent variable. And then I asked you, you also agree that that inaccuracy only grows over the course of the decade; isn't that right?

A. Yes.

Q. And your analysis did not try to find a floor because you know that there is uncertainty in the data; isn't that right?

A. Yes.

Q. And now, you agree that a district drawn with BVAP below 50 percent is, by definition, not majority minority, correct?

A. Yes.

Q. Okay. And in this case, you were not asked to identify a precise number between 50 percent BVAP and [446] 55 percent BVAP that should have been applied to any of the districts, correct?

A. That's right.

Q. And, in fact, you think that finding an exact point assumes precision that isn't in the data and that's why you don't do it, it's why you don't think you should do it, and it's why you don't make that claim; isn't that right?

A. Yes.

Q. Okay. Instead, you think it is useful to find a range at which a district can perform; isn't that right?

A. Yes.

Q. And you conclude in your report that 55 percent BVAP was not necessary for these districts to be performing majority minority districts, correct?

A. Yes.

Q. Okay. But you also don't believe finding a precise number between 50 and 55 percent BVAP is useful; isn't that right?

A. I don't believe the precise number. I was not asked to find a precise number, and there's no reason to believe that the precise number has to be between 50 and 55 percent.

JUDGE PAYNE: According to the information that you showed us on one of your charts showing the chart from [447] 45 percent to 50 percent to 55 percent—do you see that? Do you remember that chart?

THE WITNESS: Yes.

JUDGE PAYNE: Is that your way of saying that a range of 45 to 50 percent is appropriate in this case?

THE WITNESS: I'm not saying what's appropriate in this case. I'm saying those are levels at which these distributes would continue to elect African-American preferred candidates.

JUDGE PAYNE: Candidates of their choice?

THE WITNESS: Yes.

JUDGE PAYNE: So the range would be 45 to 55 percent?

THE WITNESS: I don't find—

JUDGE PAYNE: Do you agree or not?

THE WITNESS: I don't find a bottom of the range or obviously, if you go higher than 55 percent, a pattern will continue. I just show that within this range, that is the case.

JUDGE PAYNE: Okay. Pardon me, Ms. McKnight.

MS. MCKNIGHT: No. Thank you, Your Honor.

Q. On this topic of VTD splits, I'd like to draw your attention to page 11 of your initial report, Table 5. So this is Plaintiffs' Exhibit 71 on page 11.

MS. MCKNIGHT: Oh, pardon me, Your Honor. [448] Pardon me, Your Honors. This is actually his reply report. So it's PX—sorry. What plaintiffs' exhibit number?

MS. TOLBERT: Seventy-two?

JUDGE PAYNE: She didn't ask about his reply report, did you, or did I miss it?

MS. KHANNA: I did not ask any questions about the reply report.

JUDGE PAYNE: No. I think I told you not to, that we would wait until—by the event. Now, are you opening the door?

MS. MCKNIGHT: No, I'm not opening the door. I'll wait. If it's raised, I can address it then.

Q. Could you turn to page 63 of your report. That is Plaintiffs' Exhibit 71, 63. Now, Ms. Khanna had some questions for you about this chart, and I'd like to ask a few more.

Now, just to orient the Court, I believe that the rows, as identified in the furthest left column, identify four different factors that were analyzed; is that right?

A. Yes.

Q. Into determining the effect of BVAP and party on assignment of VTDs to challenged districts, right?

A. Yes.

Q. I'd like to draw your attention to the row titled [449] "VTD in Challenged District in Benchmark." Dr. Palmer, isn't whether a VTD was included in the benchmark district a stronger predictor than BVAP as whether that VTD would be included in the newly drawn district?

A. Yes.

Q. In fact, the numbers, in most cases, is nearly twice as high as the numbers for BVAP; is that right?

A. Yes.

Q. So if I had to make a bet about whether a VTD would be included in a challenged district and I was only allowed one piece of information from your chart in Table 20, the piece of information I should choose is whether the VTD was in the benchmark version of the district, correct?

A. Yes.

Q. Now I'd like to turn your attention to page 48 of your report, Figure 21. Now, plaintiffs' counsel discussed parts of this analysis with you, but I don't believe she asked any questions about Figure 21. Now, Figure 21 of your report shows the democratic vote share in an off year statewide Virginia election for governor; is that right?

A. Yes.

Q. And this was the statewide election most closely preceding the 2011 redrawing in time, correct? [450]

A. Yes.

Q. And Virginia elects its officials in odd years; is that right?

A. Yes.

Q. So elections for House of Delegates are in odd years, correct?

A. Yes.

Q. Now, the other figure on page 48 of your report is not an odd year election, correct?

A. Correct.

Q. Now, if we could go back to Figure 21. Now, in this figure, the open circles estimate white vote shares for democrats in this election in these districts, correct?

A. Yes.

Q. And the closed circles estimate the black vote share for these districts in this election; is that right?

A. Yes.

Q. And the red line indicates a 50 percent vote share for democrats, correct?

A. Yes.

Q. Okay. And the vertical lines represent confidence intervals; is that right?

A. Yes.

Q. Meaning you can't say with certainty where on this horizontal line of a confidence interval a number falls, [451] but assuming that all of your data is

absolutely correct, you can only say that your estimate likely falls within that horizontal line; is that right?

A. That's right.

Q. Now, where a closed circle is above the red line and the corresponding open circle for that district is below the red line, that indicates polarized voting, correct?

A. It indicates that—yes, it indicates that a majority of African-Americans are voting differently than a majority of black voters.

Q. So as I'm reading this chart, for 9 of the 12 majority minority districts; that is, HD 63, 70, 74, 75, 77, 80, 90, 92 and 95, your own numbers indicate that the vote in this odd year race is polarized, correct?

A. Yes.

Q. And for two of the remaining three districts, HD 69 and 89, you can't say with certainty that polarized voting is not present, correct?

A. Correct.

Q. Okay. So that leaves HD 71. And you can't say with certainty, based on the data you reviewed for 2009, that a black democrat candidate would defeat a white democrat candidate in a primary in this district, can you?

A. I'm sorry. Can you repeat the question?

Q. Sure. You can't say with certainty, based on the [452] data you reviewed for 2009, that a black democrat candidate would defeat a white democrat candidate in a primary in this district, can you?

A. Based on 2009 data alone, no, I cannot.

Q. Now, in your analysis, your definition of a preferred candidate of choice is a democrat, correct?

A. That's not the definition. That's what the data show.

Q. Do you recall me asking you this question in deposition?

A. No.

Q. Okay.

JUDGE PAYNE: Show it to him, please, if you want to pursue it. Page and line for the other counsel.

MS. MCKNIGHT: This is page—I'll put it in the mic so everyone can hear. This is page 115 of your deposition at line 20 through 116 at line 6.

JUDGE PAYNE: Can you read that, Dr. Palmer? There. That's a little better now.

A. Can you tell me what lines again?

Q. Sure. It's line 20.

JUDGE PAYNE: The question begins, "And in Figure 5 how do you define preferred candidate?" Is that where you are?

MS. MCKNIGHT: Yes.

[453] THE WITNESS: Can I see the next page, please.

A. Okay.

Q. Okay. So in your analysis, your definition of a preferred candidate of choice is a democrat, correct?

A. Yes. But that's the definition informed by the data and analysis, not some external definition.

Q. Correct. And that's your definition as a political scientist. It's not a legal definition, right?

A. That's right.

MS. MCKNIGHT: Okay. You can take that down, Amy. Thank you.

Q. And now, you believe the difference between using primary elections versus general elections and applying your analysis is that in a general election, you're comparing votes shares between a democratic and republican candidate or across multiple parties and in a primary, you're going to be comparing just the candidates in that primary, correct?

A. Yes.

Q. And so if you only use general elections in your analysis, you do not have the primary data showing whether a majority minority community preferred a black democratic to a white democratic, correct?

A. In my reply report, I address this question.

JUDGE PAYNE: How about answering the question, [454] though, yes or no?

A. I'm sorry. Repeat the question.

Q. Sure. If you only used general elections in your analysis, you do not have the primary data showing whether a majority minority community preferred a black democrat to a white democrat, correct?

A. That's right.

Q. Okay. And in your initial report, did you use primary data anywhere?

A. No.

Q. Now, the election data that you used, you relied on election data provided by Dr. Katz and the methodology he used to do it; isn't that right?

A. Yes.

Q. And the reason you did this was in order to be consistent with the way that Dr. Katz was analyzing the data, correct?

A. Yes.

Q. Okay. And you believe that any problems in the data would be the same as existing in Dr. Katz's data; is that right?

A. Yes.

MS. MCKNIGHT: Thank you, Your Honors. I have no further questions. Thank you, Dr. Palmer.

JUDGE PAYNE: Redirect. Just remember now, the [455] redirect doesn't mean going back over everything you did in direct.

MS. KHANNA: I understand, Your Honor. Thank you.

REDIRECT EXAMINATION

BY MS. KHANNA:

Q. Dr. Palmer, I'm just going to ask you a few more questions based on the examination that Ms. McKnight just provided. You testified on cross-examination with Ms. McKnight about the number of VTDs that were split between District 75 and a nonchallenged district; is that right?

A. Yes.

Q. And in your report, you report that there are 32 populated VTD splits between a challenged district and a nonchallenged district; is that right?

A. Yes.

Q. And is it fair to say, based on your Table 3 in your initial report, page 52, that 8 of those 32 VTD splits involved District 75; is that right?

A. Yes.

Q. So 26 of the populated VTD splits that you analyzed involved the remaining challenged—11 challenged districts; is that right?

A. Twenty-four.

[456] Q. Sorry. Twenty-four. And how many—out of 24 VTDs, in how many of those 24 did the BVAP on one side of the—on the challenged district side exceed the BVAP on the nonchallenged district side?

A. In 23 of them.

Q. Twenty-three out of 24?

A. Yes.

Q. Now, the Court has already found, as Ms. McKnight pointed out, that the Court has already found that race predominated in the configuration of District 75; is that right?

A. Yes.

Q. Did you observe any patterns of division along racial lines in District 75, based on your analysis?

A. Yes.

Q. Were those same patterns apparent in the 11 remaining challenged districts?

A. Yes. I found the same pattern everywhere.

Q. Now, Ms. McKnight also pointed to the—your figures on pages 31 through 39 of your report—or 38 of your report; is that right?

A. Yes.

Q. And do you recall that she asked a question about the scale under—I think she used page 38 as an example, compared to the scale used on one of the figures in page [457] 31; is that right?

A. Yes. I think it was a different figure she referenced, but we were comparing scales.

Q. Okay. And does your analysis draw any comparison across any of these figures to one another?

A. No.

Q. Does your analysis provide any comparison across—from one VTD to another?

A. No.

Q. What is the comparison that you are drawing in each of your figures? Sorry. What is the analysis that you are providing in these figures?

A. The figures simply serve to highlight how lines were drawn, such that areas of high concentrations of black voters were drawn into the challenged districts.

Q. So you're showing—with each individual figure, you're showing the distribution of black voters within that VTD, not across VTDs; is that right?

A. That's right.

Q. So why not use a single scale for all of the figures from 0 to 100?

A. Well, first of all, if the scale goes from 0 to 100, it's unlikely to be the case that all of the black population resides in a single block. So that means that the darkest possible color won't be used at all. So then [458] let's just say the highest possible—let's just say the highest place is 50 percent. So one block now, instead of being dark green, will be sort of medium

green, and everything else will be spread out across the lighter greens. It's just harder to see where the variation is.

By setting the scale such that the darkest place is always at the highest BVAP—has the highest concentration of black voters, it's easier to see variation across the place.

Q. Within that VTD only, right?

A. Within that VTD alone.

JUDGE PAYNE: In other words, you're saying you chose the scale for visual impact so you would be able to see it better?

THE WITNESS: That's right.

Q. If you had used a single 0 to 100 scale in a relatively low BVAP VTD, would you be able to see any variations between black voter concentration in different parts of the VTD?

A. No. It would be very difficult to see that variation.

Q. So Ms. McKnight asked you about Table 25. Table 25 is, again, page 68 of your report. And I believe she asked you about how you calculated the democratic vote share. And if I'm correct, you responded that your—you [459] averaged together the 2008 presidential statewide election and the 2009 gubernatorial election; is that right?

A. Yes.

Q. Why did you average these two elections in Table 25?

A. Well, Dr. Katz, in his race versus party analysis, used the average of these two elections in

that analysis, and I thought that would be appropriate to use here as well.

Q. Do you provide a racially polarized voting analysis of the 2009 gubernatorial election on its own?

A. Yes. That is the—the center column of Table 23.

Q. Do you have any reason to believe that your analysis in Table 25 would have been different had you looked only—had you used information based on that table solely on the 2009 gubernatorial election?

A. The numbers would have been a little bit different, but I would have reached the exact same substantive conclusion.

Q. So you have no reason to believe that it would have been any different had you used only the 2009 gubernatorial election?

A. My conclusions would have been the same.

Q. Okay. If—page 48 of your report. Ms. McKnight had talked about Figures 20 and 21. Figure 21 specifically plots racial voting patterns in each of the [460] challenged districts based on the 2009 gubernatorial election; is that right?

A. Yes.

Q. And do any of these districts indicate that there is racially polarized voting?

A. Yes.

Q. And racially polarized voting would say exist in District 95; is that right?

A. Yes.

Q. And is that because a majority—based on both the point estimates and the confidence intervals, a majority of whites are voting for a different candidates than the majority of African-Americans; is that right?

A. That's right.

Q. Let's turn to Figure 22. Now, Figure 22 is the same racially polarized voting analysis except this is based on the average of the 2008 presidential election and the 2009 gubernatorial election; is that right?

A. Yes.

Q. Tell me about what your observation is of whether or not there is racially polarized voting in District 95, based on Figure 22?

A. Yes. There is racially polarized voting in District 95.

Q. So a majority of white voters are voting for [461] different candidates than a majority of African-American voters?

A. Yes.

Q. Now, the fact that there is racially polarized voting based on the various elections and analyzed here in District 95, does that mean that District 95 requires a 55 black voting age population in order to elect African-American preferred candidates?

A. No.

Q. How do you know?

A. Well, as the—as Table 25, that analysis shows us, the level of white support, while it is not a majority supporting the African-American preferred candidate, it's still nontrivial. It's still around 25 percent of the vote, 25 percent of the white vote, which means that

that's going to contribute a substantial amount to the overall vote share for the African-American preferred candidate in that district. It's the level of polarization that's important, coupled with the size, the population size of each group that tell us whether the—that tell us how the district will perform.

Q. So it's your understanding you have to look at the level of racially polarized voting in order to know whether or not there's a certain black voting age population that's required in order to elect the minority [462] preferred candidate?

A. Both the level and the sizes of each population group.

Q. So looking back at Table 25 on page 68, let's take a look at District 95, which we've just been examining on these figures. And what does your analysis in Table 25 tell you about District 95?

A. It shows that at 45, 50 or 55 percent BVAP, this district would continue to elect African-American preferred candidates with vote shares in the 60 percent to 70 percent range.

Q. And when you're talking about the 60 percent to 70 percent range, are you including the confidence intervals there?

A. Yes. The bottom lower bound, when I estimate vote share using 45 percent BVAP is 60.7 percent, and then the high end of the range at 55 percent BVAP is 70.5.

Q. So the estimated level of uncertainty goes to low of 60.7 percent in favor of the African-American preferred candidate; is that right?

A. Yes.

Q. Ms. McKnight asked you about whether or not in your initial report you used—you analyzed any democratic primaries; is that right?

A. That's right.

[463] Q. And you used only general elections in your racially polarized voting analysis provided in your initial report; is that right?

A. Yes.

Q. Why?

A. I think general elections are the most informative about the ability—about the district's ability to elect African-American preferred candidates. That is it's at the general election level where the ultimate election is held and the ultimate chance for an African-American preferred candidate to win.

Q. You also testified earlier that you had examined the expert reports submitted in the 2015 round of this case; is that correct?

A. Yes.

Q. Were there any—was there anyone who provided a racially polarized voting analysis during—in that phase of the case?

JUDGE PAYNE: That wasn't dealt with in cross-examination, and you are confined, if you don't mind—and you're fairly well—you all are now over half the time we've got to trial. So let's see if we can truncate this and make it stay with what's appropriate. Okay?

MS. KHANNA: Understood. Thank you, Your Honor.

[464] Q. Dr. Palmer, was one of the reasons that you looked at general elections in your initial report because both Dr. Katz and Dr. Ansolabehere also only looked at general elections in their racially polarized voting analysis?

A. Yes.

Q. Ms. McKnight asked you whether you would have advised a legislature about a precise point at which a district should have its black voting age population in order to perform for minority preferred candidates. Do you recall that?

A. Yes.

Q. Would you have advised a legislature that a 55 percent black voting age population was necessary in any of the challenged districts to perform for minority preferred candidates?

A. No.

Q. Why not?

A. As my analysis shows, that 55 percent BVAP threshold was not required for African-American preferred candidates to win any of these districts by a comfortable margin.

Q. What if the BVAP—what if the black voting age population were to drop over time?

A. Given the large margins by which these candidates are winning, there's substantial room for demographic changes here.

[465] Q. What if the white voting patterns were to shift and more whites were to all of the sudden start voting against minority preferred candidates?

MS. MCKNIGHT: Your Honor, I'm going to object. Dr. Palmer has already testified that he didn't do any sort of analysis in order to answer these questions.

MS. KHANNA: I don't—Your Honor, I don't believe that Dr. Palmer—I'm asking him to testify specifically about what would happen. I'm testing his conclusion even if these other assumptions were to take place. These are the assumptions that Ms. McKnight asked him to assume.

JUDGE PAYNE: Objection sustained. Anything else?

MS. KHANNA: Thank you, Dr. Palmer. I have no further questions.

JUDGE PAYNE: Can he be excused or are you going to keep him around? Do you want to keep him around?

MS. KHANNA: Yes, we're going to keep him until—

JUDGE PAYNE: All right. Thank you. You may step down.

(Witness stood aside.)

JUDGE PAYNE: Do you have any other witnesses, Mr. Hamilton?

[466] MR. HAMILTON: We do not, Your Honor. I'd like to confirm that the deposition excerpts that we discussed yesterday afternoon have all been prepared by Ms. Marino and placed in notebooks behind Your Honors on the bench. I would just like to confirm that all of the deposition excerpts from 2015, as well as 2017 have been admitted and are part of the record.

JUDGE PAYNE: Any position on that? Do you agree?

MS. MCKNIGHT: We agree. Yes, Your Honor.

JUDGE PAYNE: Yeah. I think that's correct. Yeah.

MR. HAMILTON: And with that, Your Honor, the plaintiffs rest.

JUDGE PAYNE: Defense.

MR. BRADEN: At this time the defendant-inventors will call Delegates Jones.

JUDGE PAYNE: Delegate Jones.

MR. BRADEN: And we have some witness binders to pass out that hopefully will facilitate the testimony.

JUDGE PAYNE: All right. Thank you.

STEVEN C. JONES,

called at the instance of the defendant-intervenors, having been first duly sworn, testified as follows:

[467] **DIRECT EXAMINATION**

BY MR. BRADEN:

Q. Delegate Jones, would you remind the Court of your name and position?

A. Steven, with a V, Christopher Jones. I serve in the House of Delegates, representing the 76th District, which is part parts of Suffolk and Chesapeake.

MR. BRADEN: Your Honor, I understand that Delegate Jones has testified extensively before, and I know there's a record on this. I hope not to duplicate that record in his testimony today, but there were a

number of issues that were brought up in the plaintiffs' case that—that challenge his credibility on some issues and contradict his earlier testimony. So we're going to ask him questions and try not to be duplicative of what was testified before.

JUDGE PAYNE: All right. I think we need that.

Q. Delegate Jones, again, can you remind the Court of your role in the 2011 redistricting process in Virginia?

A. I was the chief architect in the patron of the bill.

Q. And what was your role in 2001?

A. I was the heavily involved and was the chief patron of that bill as well, House Bill 1.

Q. And so one of the reasons you were chosen in 2011 was because you were chosen in 2001?

[468] A. That would be the case, yes, sir.

Q. Lucky you.

A. Lucky me.

MR. BRADEN: If we could bring up Plaintiffs' Exhibit 16.

Q. Do you recognize this document?

A. I do.

MR. BRADEN: Your Honor, I won't go extensively through it, but I think it's important to point out two specific items.

Q. If you could look at Roman numeral I. Is that one of the areas that it changed from 2001 to 2011?

A. Yes.

Q. And what changed?

A. The population was plus or minus 1 percent from plus or minus .5.

Q. And what effect did that—that was a significant decrease in the overall population range from the prior one?

A. I don't believe so.

Q. Okay. The prior one was plus or minus 2 percent?

A. It could have been. That's been 15 years ago.

Q. So your role was as the principal patron and architect of the plan. Did you have a principal consultant working with you?

[469] A. Yes. I had two individuals. I had counsel, Dale Oldham, and we had John Morgan, who had been working with me off and on since 1997. And he was—if I was the architect, he would have been my technical consultant.

Q. What was the time frame like this cycle for the drawing of the plan?

A. It was compressed. Virginia is one of maybe—I think the only state that has elections in November the year that they receive the census. We got it, I believe, the end of February and we had a tight timeline of, I believe, 1st—we had to be to Department of Justice by the 1st of May. So it caused us to compress the time frame.

Q. And am I correct that there was a problem with the census that even more compressed the time frame?

A. There was.

Q. Okay. Physically, how did you draft the plan? Did you do it on a computer?

A. I did. I had the Maptitude software.

Q. Okay. And your role was the architect. What level did you draw at?

A. The macro.

Q. So did you draw the plan at the vote tabulation district?

A. Pretty much. Yes, sir.

[470] Q. And so that process you had available, what type of data on your screen when you were drawing your part of the plan?

A. We had, I think, the PL 94 date that came from the Census Bureau. And I think Mr. Morgan was able to bring in some political data that was, I think, disaggregated reaggregated. I really don't know how that works, but that was my understanding. We had a couple of elections that were included on the election results.

Q. So you were basically drawing the plan at the VTD precinct level?

A. Correct.

Q. And then—and you were in charge of the political negotiation process?

A. As with any bill, you have to be able to put the bill together, then to have enough support for it to pass. And this bill was a little different in the fact that we had to get preclearance from the Justice Department. And so we—the process was we took the benchmark data—the benchmark plan, excuse me, and imported the census data into it. And then that gave you a template of where you stood in time and

what needed to be done due to population shifts in the Commonwealth.

Q. So the line drawing process was a technical process, but in the end, it was very much a political legislative [471] process, correct?

A. Yes.

Q. You had to corral sufficient votes to get it passed, correct?

A. I had to have a majority of votes in the House for passage and also for the governor to sign it and then for the Justice Department to approve it.

Q. And did you reach out to a majority of the members of the legislature, or most of the members of the legislature, to discuss the plan?

A. I did.

Q.—and process?

A. Yes.

Q. Did many of them have suggestions as to what their districts should look like?

A. They did.

Q. I—at the beginning of this, I mentioned a cliché that I think you're familiar with. Is it easy to draw a district and hard to draw a plan?

A. It certainly is. If I had one district design brought to me by a member, I probably had several dozens of the perfect district that would fit for them.

Q. So you were the individual involved in the political negotiations in drafting the basic plan at the VTD level. What happened after that?

[472] A. Well, you have to follow the criteria to make sure that, in fact, you are within plus or minus 1 percent. And we did have the criteria on, you know, no retrogression. We had to have—at the time, Virginia was a preclearance state. So they were the two main concerns. That's why they were criteria number one and criteria number two.

Q. And is there some criteria that requires VTDs to be sacrosanct?

A. No.

Q. Something not to violate them?

A. No.

Q. And was it your understanding the VTDs needed to be split in sections of the plan drawn at the census block level that conformed to the population requirements?

A. Yes.

Q. And who drew the plan at the census block level when you were dividing VTDs?

A. John Morgan did.

Q. Were you involved in dividing any of the census blocks out of various VTDs of the different districts?

A. There might have been a couple. I know that Richmond city, for example, they had met with the registrar. And they had wanted to align their precincts with the new wards. I call them borough at home, but wards, I believe, [473] in the City of Richmond, and we tried to address that. And then there were some concerns that had been raised, I think, that came in through legislative services and a few other areas of the Commonwealth; that people had noticed that you

could do this or you could do that. It might not affect the population. It could be like a polling place or something of that nature.

Q. And the numbers of individuals involved when you're drawing at the vote tabulation district level is much more significant than if you're drawing at the census block level?

A. Oh, yes. Your plan is built on your voting districts and how they—VTDs, if you want to call them that, and how they then make the district.

Q. And I don't want to put words in your mouth, but basically drawing at the census block level simply wasn't important enough for your time?

A. No. I had bigger fish to fry.

Q. So if someone told you that they could analyze whether race was predominant by looking at VTD splits, what would be your reaction to that?

A. Well, I would be unaware of it, number one, and would be surprised, number two, because we followed a status quo plan when we started as a base map.

Q. And the VTD splits are basically the end of the [474] process simply to equalize population, generally?

A. Generally, that's correct, or for a geographical reason. You might have a census—there was one back in 2001 in Northern Virginia, I recall, and then one had one this time with no, quote, unquote, population in it, but it just made the line look cleaner.

Q. Do you remember a split VTD in HD 71? Let me refresh your recollection.

MR. BRADEN: Let me bring up Exhibit DX 6. The video, yep. Did I get the wrong number?

(Video Played.)

Q. And that's your contemporaneous speech on the floor between the vetoed bill of HB 5001 and the new bill, 5005?

A. Yes.

Q. And if—so the split discussed in—let me use the Plaintiffs' Exhibit 69 and page 22. This is from the plaintiffs' expert report, who I believe indicated that this was some indicia of racial gerrymandering. This was at the request of Richmond election officials?

A. Yes. The horizontal line is, I think, the Downtown Expressway.

Q. Did race have anything to do with this?

A. Absolutely not.

JUDGE PAYNE: What page is that?

MR. BRADEN: It's page 22.

[475] JUDGE PAYNE: Of?

MR. BRADEN: Of Plaintiffs' 69. It's the cemetery. We seem to be discussing whether or not Jefferson Davis' body should be in 71 or 68, I guess. I'm not sure that's the point.

MR. HAMILTON: Objection, Your Honor. The commentary is inappropriate.

JUDGE PAYNE: I didn't understand it so, therefore, I disregarded it. I think all of us did.

MR. HAMILTON: Thank you, Your Honor.

JUDGE PAYNE: It's extrinsic to the task at hand. Go, Mr. Braden.

MR. BRADEN: Yes.

Q. When you look to his discussion of District 71, Dr. Rodden's discussion of 71, which begins on page 15, he believes that drawing—I don't think I'm misquoting him to say that he has provided testimony that there needed to be extensive race-based maneuvering to create District 71. Do you believe that's correct?

A. No.

Q. In fact, did you feel the need to do extensive race-based maneuvering to create any of the 11 challenged districts before this Court?

A. No.

Q. Drawing the plan was difficult because of population [476] changes, correct?

A. That made it—

MR. HAMILTON: Objection. Leading.

JUDGE PAYNE: Overruled.

BY MR. BRADEN:

Q. Were the population changes providing the most difficulty in the drawing of the plan?

A. Yes. As they did in 2001.

Q. And just briefly, remind the Court what you had to do to deal with the population changes.

A. Well, we had to shift from the southern part of the Commonwealth up through—we called it the Piedmont, across to the Valley. There were a loss of three seats from Hampton Roads, south side and southwest. Southwest had House District 2, which went to Stafford, north of Stafford. We had the 10th District, which, I believe, was talked about this morning, which is south side. That moved to Northern

Virginia. And then in Hampton Roads and Richmond—I mean, excuse me. In Norfolk, House District 87, which I think 90 percent of that was in the city of Norfolk, moved to Northern Virginia. So those three moves necessitated major changes in certain parts of the Commonwealth, especially in Hampton Roads.

Q. Just briefly, to make sure that the Court can visualize to the degree of changes, Defendant Exhibit [477] 91—Defendant-Intervenors' Exhibit 91, and I will turn to—hopefully I have the right page this time. Page 19 and 20. And on page 19, that's the prior House District 10?

A. Correct.

Q. And at the bottom is the new House District 10?

A. That is correct.

Q. And how many hours would it take to drive from one to the other?

A. Longer than I'm willing to take in a car.

Q. And do we have a district that you had to move out of the Tidewater area to Northern Virginia?

A. Yes. That was House District 87.

Q. And if we can turn to page 173 and 174.

A. Eighty-seven is on the—of course, the base map, 87, was on the north side of the city. There were, in fact, three—four districts that were based in Norfolk, and we had to move one of the four to Northern Virginia. And, of course, we had underpopulation in all of the Hampton Roads districts, if I remember correctly, except for—I think 96 on the

peninsula, I believe 78. And they were—they weren't—78 was only a little bit, and 9, which was House District 76, which has 16 percent more population than it needed, I believe.

Q. And these population changes are rippled through the [478] whole plan?

A. Yes. And I'm going from memory, which is not always the best, but I believe that the sum total in Hampton Roads, we lost really the balance of a seat and a half, or more, of population, which required us to move one seat to Northern Virginia.

Q. The 11 challenged districts, are they essentially the same as the benchmark districts?

A. In my opinion, yes.

Q. Let me do Defendant-Intervenors' 106. Excuse me. Defendant-Intervenors' 14. Sorry. Wrong tab.

MR. HAMILTON: Your Honor, there's an objection to this exhibit. It has not been—

JUDGE PAYNE: If you'll wait just a minute.

MR. BRADEN: I have—I'm looking for—

JUDGE PAYNE: What exhibit are we talking about now?

MR. BRADEN: Fourteen. Defendant-Intervenors' Exhibit Number 14, page 60.

JUDGE PAYNE: Is it a book or is it—a map book or is it—

MR. BRADEN: Actually, technically, it comes from Dr. Hofeller's report. We actually probably have a demonstrative for it, too, the same demonstrative we had before.

[479] JUDGE PAYNE: I'm just trying to find it. Fourteen is Declaration of Thomas Brooks Hofeller. Is that what you're talking about?

MR. BRADEN: Yes. Yes, Your Honor. And this is page 60, which turned out to have the best graphics, frankly.

JUDGE PAYNE: Page what?

MR. BRADEN: Page 60.

JUDGE PAYNE: And there's an objection?

MR. HAMILTON: Not to this document. It was the one he mistakenly displayed a moment ago.

JUDGE PAYNE: Yeah, because you all used this one, or somebody used this one, earlier.

MR. HAMILTON: No objection to this one, Your Honor.

JUDGE PAYNE: So page 60 of Defendant-Intervenors' Exhibit 14 we're talking about now, right?

MR. BRADEN: Yes.

JUDGE PAYNE: Okay.

Q. And can you tell the Court what this document is?

A. On this map, these three maps show House District 74 after the 1991, the 2001 and 2011 redistricting process. They were approved by the General Assembly and submitted to DOJ for preclearance.

[480] Q. And these districts are—basically the core of this district is the same as it was in 1991, 2001 and 2011?

A. Yes.

Q. Okay. From 2001 to 2011, what changes did you make?

A. We came across the river and picked up, I think, two precincts in Hopewell.

Q. And then in 2011, that section of Hopewell was removed from the district. Why was that?

A. Well, there was a lot of discussion at the—I guess on the floor after the 2001 debate and into the balance of the decade, people would come to P&E and they use this example. Not this one specifically, but House District 64 in Hampton Roads. They called that the ferrymandered district. And so there was some concern about going across the river where there wasn't a direct, quote, unquote, you know, bridge or access point.

And even though it had been upheld, I believe, in a court case, one of the goals that I had was to come back across the river from Williamsburg to south side in Isle of Wight and go back across north from Hopewell to Prince George County—I mean to—excuse me. I'm drawing a blank. Charles City County. Excuse me.

Q. Charles City County?

A. My apologies.

Q. And that crossing was the tidal estuary of the James?

[481] A. That's correct.

Q. Not like the James River in downtown Richmond, much wider?

A. Correct.

Q. And it crosses—Hopewell city is a city, correct?

A. Correct.

Q. And across is basically a totally rural, very lightly populated area?

A. Yes.

Q. Was there any racial motivation or reason for this?

A. No.

MR. BRADEN: If we could come up and show Defendant-Intervenors' Exhibit 94, page 004. It's our yellow maps.

JUDGE PAYNE: Page what?

MR. BRADEN: 004.

Q. District 207, is that in The Fan?

A. It is.

Q. And 14 and 13, are they in The Fan, too?

A. I have to clarify.

JUDGE PAYNE: 113 and 114?

MR. BRADEN: Yes, 113 and 114.

A. I would say that's bordering The Fan with the museum district.

Q. Okay. I look at this map and I see a variety of [482] little blue stars. What do those indicate?

A. Incumbents.

Q. And am I correct to say that they are all—there's a number of them in close proximity to each other?

A. There are four along what I call the—from the northwest to the southeast access going like down

the—almost expressway. You got Manoli Loupassi in 104. Jenn McClellan in 208. You have Betsy Carr in 504, and then you've got Delores McQuinn right on the edge of 703 and 705.

Q. Is it safe to assume that that presented some political difficulties in deciding how to draw this area of the district?

A. Absolutely. And I would add there were 3 of the 4—3 of the 4 were 3 of the 12 in the majority minority districts.

Q. And how did you decide to put 207 into 68?

A. When you had to have population, I believe 71 and 69 were underpopulated, as was 68 and 73. While 70 had the population that it needed and 74 had its population that you needed, if you just took as a district but not as a plan or a map, the problem was you had a shift in the demographics of House District 71. And when you looked at population—

Q. Excuse me. When you say shifting of demographics, [483] how did that district change over the decade?

A. I believe when it was—the benchmark plan in 2001 was 56 percent or 55, 56 percent, and over the balance of the decade, it dropped to 46 percent African-American.

Q. And do you believe that, in that geographic area, those same demographic trains have gone forward and been the same?

A. It absolutely has. Not because I have a condo down here, but a couple weeks ago I was with my bride and we were over across the street a couple blocks down on Grace and we went into a shop. And I always

like—being a small business owner, I like to know the history behind anyone and why they decided to open up a business. And on the wall was an article about the son who opened up the restaurant Pop's and his mom had lived her 30 years ago. She left, moved to the county to raise the son, and she moved back.

But on the front page of the Richmond paper was shifting—city changes, and the article actually said that for the first time—

MR. HAMILTON: Objection, Your Honor. A, it's not responsive. B, now he's quoting a newspaper article that hasn't been produced in discovery and is obviously not relevant here, and it's hearsay.

JUDGE PAYNE: If you can get ahold of any one of [484] those and win on it, because you need to get one of them?

MR. BRADEN: I am absolutely sure, we'll be happy to produce it for the Court. But I can rephrase the question.

JUDGE PAYNE: I think you should. Sustained.

Q. Delegate Jones, do you believe that Richmond now is a majority white city?

A. I do.

Q. Significant change from 10 years ago, or 15 years ago?

A. I believe the population growth in Richmond has been very unusual for an inner city because of the influx of millennials into the city itself.

Q. And did you discuss directly with Delegate Loupassi VTD 207?

A. I can't recall if it was directly or indirectly, but I did know that he had relatives.

MR. HAMILTON: Objection, Your Honor. If he's relating a conversation with Delegate Loupassi, it's hearsay. We were prevented from this very thing during the testimony of Delegate McClellan on the same grounds, hearsay.

MR. BRADEN: I believe what he's testifying to is that he thought he talked to him but wasn't sure but was going to tell you the reason why—

[485] JUDGE PAYNE: He said he wasn't sure. He said it was direct or indirect. And if it's direct, then perhaps there's no hearsay objection because it's admissible to show what he did, not for the correctness of the testimony. But if it's indirect, it's—it may very well be hearsay because he heard it from somebody else. And while I guess that same reason could ultimately obtain, you haven't laid a foundation for the question yet.

MR. BRADEN: Well, actually, I thought in the sense, it was almost a foundational question why I asked him—

JUDGE PAYNE: Go ahead and see what you can do.

MR. BRADEN: Yeah.

Q. Do you have an understanding whether or not Loupassi wanted 207 in his district?

JUDGE PAYNE: That's not an objectionable question.

MR. HAMILTON: As long as it's a yes or no answer, Your Honor, no objection.

JUDGE PAYNE: The answer is yes or no. Do you have an understanding?

A. I do not recall directly that conversation.

Q. Let me bring up Defendant Exhibit 106. The one I gave you a sneak preview to.

[486] JUDGE PAYNE: 106 is what?

MR. BRADEN: 106 defendant-intervenors.

MR. HAMILTON: And this is a document there is an objection to, Your Honor.

JUDGE PAYNE: Is it in the notebook?

MR. BRADEN: I believe it is. It should be Defendant—this has been—we knew that it was objected to, but it's Defendant-Intervenors' Exhibit 106.

JUDGE PAYNE: All right. It's a web page from Loupassi. Is that what it is?

MR. BRADEN: Yes. That's correct.

JUDGE PAYNE: Okay. All right. What's the objection to it?

MR. HAMILTON: It's hearsay, Your Honor. It was not produced in discovery. If it was relied upon by Delegate Jones in constructing the map, it's never been—we've long—for—

JUDGE PAYNE: Excuse me. Let's start with it wasn't produced in discovery. Is that correct.

MR. BRADEN: It was not produced in discovery.

JUDGE PAYNE: How do you get around that?

MR. BRADEN: We just created it. We are simply—

JUDGE PAYNE: Basically you're supposed to produce these documents in discovery.

[487] MR. BRADEN: Yeah. And we did, in fact, produce them as soon as we had the exhibit. It is, in fact, in response to their claims in regards to 207. We are—have produced all of the exhibits. This is a new exhibit simply we granted that it didn't exist at the time of drawing the district, but it most certainly is readily available. There's no surprise here.

JUDGE PAYNE: The question is was it produced during discovery?

MR. BRADEN: Yes. He we provided it to them—what date did we provide it to them?

JUDGE PAYNE: All right. It's disputed as to whether it was produced during discovery. So that's—

MR. BRADEN: No, it was not produced during discovery. We did not have it in discovery.

JUDGE PAYNE: But when did you—let's try again. When did you produce it?

MR. BRADEN: With the exhibits.

JUDGE PAYNE: When the trial exhibits were—

MR. BRADEN: Yes, with the trial exhibits.

JUDGE PAYNE: And was it objected to in that process?

MR. BRADEN: It was objected to at that time.

JUDGE PAYNE: And it wasn't raised at the pretrial conference?

[488] MR. HAMILTON: It was not, Your Honor, because the motion in limine wasn't filed with this or with respect to any of the other exhibits.

We've interposed—there's only about six documents, all of which are the same—of the same sort of nature, not produced, suddenly appears on the exhibit list, never produced in discovery. Obviously, Mr. Loupassi—

JUDGE PAYNE: Okay. Excuse me. It was objected to?

MR. HAMILTON: Yes.

JUDGE PAYNE: So under the protocols and requirements of the Court, it was to be taken up at the pretrial conference so that the objection could be dealt with, and I guess we just didn't take it up for some reason and the objection still is open to be dealt with. And that happens from time to time. So it sounds to me like you didn't produce it in discovery.

MR. BRADEN: That's correct.

JUDGE PAYNE: And if you're surprised or you're disadvantaged by it, we've got a problem. So I don't know that you can get it in.

MR. BRADEN: We'll withdraw it, Your Honor.

JUDGE PAYNE: All right. Exhibit withdrawn.

Q. Delegate Jones, are you aware that Delegate Loupassi has a restaurant in 207?

[489] A. Yes.

Q. Are you aware that he has a real estate business there?

A. Yes.

Q. Are you aware that he—do you know whether or not he was born and grew up in 207?

A. I do not know that. But I do know he used to mop the floors in his dad's restaurant.

Q. We have—I'll bring up—back to Dr. Rodden's Plaintiffs' Exhibit 069.

JUDGE PAYNE: What are you saying, now?

MR. BRADEN: 069, and I'm going back to the section that talks about House District 505.

JUDGE PAYNE: And that page is what?

MR. BRADEN: And that begins at page—let's go to page 18, which has the map of the district.

Q. Dr. Rodden suggests that, in his report, Summit County, Hilliard and Stafford County were removed for racial reasons. What was the reasons why those were removed from the district?

JUDGE PAYNE: In Stafford County?

BY MR. BRADEN:

Q. I mean in Summit Court, Hilliard and Stratford Hall were removed from the district. These three precincts at the top were removed from 71. What was the reasoning [490] behind removing those three districts?

A. Rotate of population from 72 to 73, and that population was needed for 72.

Q. And what county are they in?

A. They are in Henrico.

Q. They are in Richmond? Not in Richmond, then?

A. No, they are not in Richmond.

Q. So the line between those is the county line?

A. Correct.

Q. Dr. Rodden suggests that it will logical, under traditional redistricting criteria, to have moved this district west. Is that logical to you?

A. No.

Q. Why not?

A. Well, you had population needs and you already had a district on the west side, 68, that had what I would consider more, you know—the museum district is multifamily. It abuts part of The Fan. 207 is probably is more like 114 and 113 then the other end of 208, from my observation. And moving west would have certainly been problematic, in my opinion, for DOJ approval because it would have further diluted what was already, in my opinion—I think DOJ is stating anything below 50 percent would have a problem, and I do not believe there would have been one member of the African-American [491] caucus that would have supported the plan.

Q. And would this also have presented a political problem for republican members of the legislature?

A. Yes.

Q. It would have brought more democratic voters into their districts, potentially?

A. Well, if it would have went west too far, it would have combined Delegate Loupassi either Delegate Carr or Delegate McClellan.

Q. Is it your opinion that this type of redrafting would effectively likely remove one majority minority performing seat from the Virginia legislature?

A. Could—it certainly could do that. And like I said earlier, Richmond is no longer a majority minority city.

Q. Is Jennifer McClellan an unusually compelling candidate?

A. She is.

Q. And so how well she runs an election, would that be a predictor of how well another African-American candidate might run in that district?

A. No, not in my opinion.

Q. I'd like to draw your attention to page 36. This would also, I think, be of assistance if you looked, in addition, at—this is—well, let me ask you. This—what district is illustrated in Figure 11?

[492] A. Sixty-three.

Q. And is 63—who's the member of 63?

A. It was then Delegate Dance, now Senator Dance.

Q. And what role did Delegate Dance play in drawing this district?

A. Well, she played a significant role in the districts in the Richmond area. If I recall correctly, she—the working biggest concern was with 75, and then was trying to configure her district to being a forming majority minority district.

Q. And if you look—it might be easier to look at Defendant-Intervenors' Exhibit 94, page 001, which is our familiar yellow map. There's what's been called the finger right here. Is that a configuration in the district that you wanted?

A. No. There would have been no reason for me to draw that. They are two similar districts side by side, majority minority districts. And the boundary, from my perspective, really wasn't a highest priority.

Q. So the principal decision-makers there, to a large degree, were the two African-American members?

A. Yes. It was a request from New Hope to stay in the 63rd. And with the population challenges that we had in Hampton Roads moving west with North Carolina to the south and the James River to the north, 75 was very challenging [493] to draw. And so the boundaries that were drawn in Dinwiddie County certainly impacted the configuration of House District 63.

JUDGE PAYNE: Who requested that New Hope stay in District 63?

THE WITNESS: Then Delegate Dance.

Q. And were you thinking this was probably—or did she indicate to you that she was concerned about a primary challenger?

A. My memory—of course, you have to—you know, I probably talked to 70 plus members in the whole process in a very compressed timeline. I thought that initially that the finger had to do with a primary—a potential primary component, but my memory could be refreshed.

I do recall she had a specific ask to have the New Hope precinct in her district, which further complicated the configuration because of the population. I think that's a fairly large precinct. Maybe over 4000 people. I'm going from memory. I

don't know. I shouldn't speculate, but I think it was fairly large population wise.

Q. And if we look down here, New Hope, what impact politically would that have had if you could move it to up to the republican district north of 63?

A. It would have certainly made it more problematic for [494] Riley Ingram reelection.

Q. And drawing the districts here, was this a particularly different area to draw?

A. It was. This was where the Richmond area and Hampton Roads really kind of came together per se, because of the—trying to stay on the south side of the James all the way up until we got to, you know, to Prince George County. And so the population requirements moving from the west, from 75, required that 62, which was Delegate Ingram, who was a former mayor of Hopewell, I believe his district was in the top three of the most changed districts in—of the hundred that were drawn. He had one of the most dramatic impacts of his district of any of the other members.

Q. There are a number of split VTD districts on 63. Were you involved in drawing any of the split VTDs?

A. No, not in the Hopewell area. I don't recall the finger. I might have talked to John Morgan about that, but I don't specifically recall drawing that, no.

Q. And th s would be for the same reason you testified before, because the numbers involved wouldn't have been sufficiently important for you to spend time on?

A. Correct.

JUDGE PAYNE: What is your understanding as to why the area that is between New Hope and Courthouse, [495] which looks like a hook or a finger, is there—is drawn that way at all?

THE WITNESS: I believe initially New Hope was not in the 63rd. I believe there was an individual that lived up in that tip that the individual was concerned about running against him in a primary. So the original configuration looked much differently. But at the end of the process, New Hope was something that she had wanted in her district. She had worked very hard. She was one of the two point of contacts for the Black Caucus.

And so New Hope was inserted in there, and that henced the configuration. Because I believe that follows 85 on the south. The north border of—northwest border of New Hope, I think, is Interstate 85.

JUDGE PAYNE: Why is the tip or hook that you're talking about in there at all?

THE WITNESS: It was in there initially.

JUDGE PAYNE: Why is it—why does it appear on this map as an area that was taken out of 63?

THE WITNESS: Initially, I believe, it was out, as was New Hope. And so it looked more—it was more of a—it was more like a—I would say an upside down U.

JUDGE PAYNE: All right.

THE WITNESS: And then we inserted New Hope at the end of the process, if I recall correctly.

[496] JUDGE PAYNE: All right.

Q. And let me turn to Plaintiffs' Exhibit 69, page 33. Are you there?

A. Yes, sir.

Q. And it may be difficult for you to orient yourself, but this is the northern part of District 74, and it's the—do you understand what this map is, this dot-centric map?

A. Well, it's the first time I've seen like this.

Q. Do you ever seen anything like this in the redistricting process?

A. No.

Q. Can you understand how it would really be of any use to you in the redistricting process?

A. I would be lost—

Q. Okay.

A.—to draw a map.

Q. I believe that this particular page here is an attempt to illustrate some split VTDs at the northern part of House District 74. Were you involved in splitting any of these VTDs?

A. No.

Q. And why not?

A. I just had too many other things to do. We had a tight time frame. We were delayed by a week and a half [497] because of the census data error, and we had to get a bill through the process with our public hearings, and we couldn't hold any public hearings until after we had the data. It was a census block data problem down in Hampton Roads that was like a 20-some thousand person mistake. And so we had to hold

off on our public hearings. So we had a very tight timeline.

Q. And then let me turn you to Defendant-Intervenors' Exhibit 94, page 008. Do you see recognize what district this is?

A. I do. It's 77.

Q. And who represented—who represented 77 at the time it was drawn?

A. Delegate Lionell Spruill.

Q. Is Delegate Spruill still a member of the legislature?

A. He is. But he's serving in the Senate now.

Q. Okay. It looks to be—am I correct there are only modest changes from the prior plan?

A. I would agree with that, yes.

Q. And the changes occur principally at the eastern end of the district?

A. Yes. We had a lot on the western end of the precinct.

Q. And the changes on the eastern end, were those at the [498] direct request of Lionell Spruill?

A. They were.

Q. Do you know the racial composition of those precincts?

A. I do not, but I do not believe they are—they are not majority minority precincts. I do know that prior to 2001, they were in the 77th, I believe, and he requested that—that's part of south Norfolk, and he requested that to be put back into his district. His house is, I believe—got my glasses.

Q. It's virtually on the line?

A. Right. The adjacent precinct to Norfolk Highlands.

Q. So in one sense, he's basically asking to get his neighborhood that he lives in to his district?

A. Correct.

Q. And are those new parts in the Senate district, new Senate district?

A. I believe so. I'm not really this familiar with the Senate map.

Q. At the other end is Airport?

A. No. That is in my 76th District.

Q. Yeah. I was going to—that's been moved from the old district to your district?

A. Correct. That's correct.

Q. Did it have any racial implications by moving to your [499] district?

A. No. It was a good republican precinct. And moving the population to the east and taking out Chittum and Geneva Park, removing Airport made it work as far as the almost plus or minus 1 percent. I believe we had to—I didn't do it, but I think the split was at Lakeside. There I think the—I think the John F. Kennedy split—I remember this because I represented that area—existed in the 2001 map, if I'm not mistaken. I don't think that changed.

Q. Can we go to Defendant-Intervenors' Exhibit page 10?

JUDGE PAYNE: Ninety-four, page 10?

MR. BRADEN: Yes, 94, page 10.

Q. Do you recognize that district?

A. I do.

Q. Who represents that district?

A. Matthew James.

Q. Was he a freshman member when this was drawn?

A. He was.

Q. Did he have actually much input into drawing the plan?

A. I can't answer that directly. Delegate Spruill, at the time, was the point person for the six districts in Hampton Roads, just like Delegate Dance was in Richmond for those six. It was my understanding that he did.

[500] Q. Is the drawing of this district driven by—in part, by the interest of the former incumbent member in the district just north of that?

A. Yes. Delegate Joannou.

Q. And what district number was that?

A. Seventy-nine.

Q. Was he a democratic member?

A. Democrat, yes. Very conservative democrat.

Q. And you drew some districts that were out of his district that were democratic precincts, correct?

A. Let me be clear. Do you mean I drew some VTDs?

Q. Yes, VTDs.

A. Right. Okay.

Q. When you drew that District 79, Johnny lost some democratic voting precincts?

A. He did.

Q. Was he unhappy about that?

A. No.

Q. Were those changes basically at his request?

A. Yes.

Q. Because he was afraid of a primary opponent?

MR. HAMILTON: Objection, Your Honor. Now he's calling for hearsay. Unless he's got personal knowledge independently, he can't relate what Delegate Joannou did or didn't think. He could have come into this court and testified himself.

MR. BRADEN: That would have been rather difficult since he's dead.

MR. HAMILTON: Then it's a problem, but it's still hearsay.

JUDGE PAYNE: So you still haven't figured out—haven't gotten a foundation as to how he knows this.

Q. Did you speak—

JUDGE PAYNE: Do you know why Joannou wanted the precincts—those precincts moved? Yes or no.

THE WITNESS: Yes, sir. Yes.

JUDGE PAYNE: And the next question is how do you know?

Q. How do you know.

JUDGE PAYNE: From a discussion or from what?

THE WITNESS: Personal conversations with Delegate Joannou.

JUDGE PAYNE: Joannou?

THE WITNESS: Yes, sir.

MR. HAMILTON: Then it's hearsay, Your Honor.

JUDGE PAYNE: How does it get in?

MR. BRADEN: It gets in because it formed his decision making in drawing the plan. One of the issues in this case is his intentions in drawing the plan. [502] Providing information as to what people told—

JUDGE PAYNE: So it's offered for a nonhearsay—

MR. BRADEN: Nonhearsay, yes.

JUDGE PAYNE: Not for the truth of the matter? Is that your point?

MR. BRADEN: Not necessarily. It's how it affected his drawing of the plan. Not whether or not it was true he had a primary opponent.

MR. HAMILTON: May I be heard, Your Honor?

JUDGE PAYNE: Yeah.

MR. HAMILTON: It is, in fact, relevant. The problem is it is exactly—the only reason it's relevant is if it's offered for the truth of the matter asserted. That is, I'm a conservative democrat. I want to lose these precincts or I'm worried about my reelection. Those are all offered for the truth of the statement. And that's the only way that makes it relevant. It's not offered for state of mind.

MR. BRADEN: No. It's offered for the purpose of the effect it had on him. It doesn't matter whether it's true or not.

JUDGE PAYNE: You're offering it for the purpose of why Delegate Jones did what he did?

MR. BRADEN: Absolutely correct.

[503] JUDGE PAYNE: So it makes no difference. Is that your point?

MR. BRADEN: That's absolutely correct. It doesn't matter whether it's true or not. It's whether or not he believes it's true.

MR. HAMILTON: But, Your Honor, it's not—

JUDGE PAYNE: Sustained.

MR. HAMILTON: Thank you, Your Honor.

Q. Do you believe personally that the districts you pulled out of his district would benefit him politically?

A. Yes.

Q. And that motivated your actions?

A. Correct. He was a dear personal friend. We served on a conference for six years together, the budget conference.

Q. If we could go to Plaintiffs' Exhibit 69. First, let me ask about page 56. Can you recognize from this map which district this is?

A. Yes. House District 89.

Q. What is House District 89?

A. It's in the city of Norfolk.

Q. Okay. Again, I think it might be easier to use Defendant-Intervenors' Exhibit 94, page 11, the yellow map. Who represents that district?

A. I can't remember who represents it now, but at the [504] time it was Delegate Kenny Alexander.

Q. And the changes you made in the district, you added these areas here, here and here, am I correct?

A. That's correct.

Q. And why is this district drawn in this manner?

A. We had a population need, as did its neighbor—well, every district around it had a population need, to include 100, 82, I think 90 and 80 and 79. We put Berkley in. That's where the member had a business.

Q. Is this the location of one of the funeral homes?

A. Yes.

Q. Let's go to page 58 of Plaintiffs' Exhibit 69.

JUDGE PAYNE: Page what?

MR. BRADEN: Page 58 of Plaintiffs' Exhibit 69?

Q. Do you see what I just circled?

A. I do.

Q. And do you know what that dot is meant to indicate?

A. I believe that's one of his three funeral homes.

Q. Do you remember your testimony regarding the location of that from the prior trial?

A. Yes, I do.

Q. Were you mistaken?

A. I was.

Q. You believed it was in Granby—

A. Grandy.

[505] Q.—Granby precinct, correct?

A. Yes. I had the wrong side of the street.

Q So it's across the street from where you thought it was?

A. Correct.

Q. Did you have anything to do with the splitting of this VTD?

A. No.

Q. So your mistaken testimony is in regards to the funeral home, you believe—do you believe now the funeral home you were thinking of—you should have been talking about was the one in Berkley?

A. Yes. Obviously, I was confused.

Q. Do you have any reason to believe race was involved in any way in splitting this precinct?

A. No.

Q. And if we go to Defendant-Intervenors' 94, page 12, do you recognize that district?

A. I do.

Q. Can you tell us who represented at the time this was drawn?

A. Delegate Howell, Algie Howell.

Q. And where is this?

A. It's on the east side of Norfolk. It has part of Virginia Beach in the district.

[506] Q. This area used to be in the district?

A. It did.

Q. Is that the area that went to now Senator Spruill?

A. Yes.

Q. The additional areas?

A. Correct. I cannot remember the population need, but I believe it was pretty substantial.

Q. Okay. Let me go to Plaintiffs' Exhibit 69, page 60—page 61. Let's do 61. This is Dr. Rodden's dot-centric map, which has a number of VTDs in District 90. Let me circle for you—can you read the name of that particular vote tabulation district?

A. I believe it's Reon, R-E-O-N, I think.

Q. Were you involved in any way in the splitting of that district?

A. No.

Q. Do you have any reason to believe it was split for any reason other than population?

A. I would assume it's population because this district borders three other districts, I believe, or four.

JUDGE PAYNE: I think he's asking you not what you assume—

THE WITNESS: I'm sorry.

JUDGE PAYNE:—but whether you remember whether it was split for population reasons or otherwise?

[507] THE WITNESS: Population reasons.

Q. Let me go to yellow map book for District 92.

JUDGE PAYNE: This is page what of?

MR. BRADEN: This is page 13 of the Defendant-Intervenors' 94. The yellow map book.

Q. Do you see recognize this map?

A. I do.

Q. What is this map of?

A. The 92nd District in the city of Hampton.

Q. And is this one of the challenged districts?

A. It is.

Q. And do you know who represented it at that time?

A. Delegate Ward. And she still does.

Q. Okay. So can you just briefly explain the reasoning behind the drafting of this district?

A. There was a significant population need. Of course, on the peninsula, if I remember correctly, I believe every one of the districts south of 96, which is Delegate BaCote, which is York County, had a pretty significant population need. Part of that was addressed when we took 64 back across the river and we freed up Williamsburg city in the west side of James City County. And my guess is that would have been probably a third of the district. So that was probably—I don't know—25 to 35,000 people.

So she's constricted by the James River in the [508] channel, our harbor channel. So she just became more compact. And I believe this is one of the only districts that doesn't have a split precinct. I could be mistaken, but I don't think there's a split precinct here.

Q. Then let us move on to House District 95, which is a yellow map on Defendant-Intervenors's Exhibit 94, 014, page 14. This was one of the challenged districts. Who was the incumbent member at the time?

A. Mamye BaCote.

Q. Safe to say the district is a little elongated?

A. It is.

Q. What underlies that lengthy trip up the peninsula?

A. Well, it's a combination of the previous 93rd to the north and the basic, you know, configuration of the 95th as it stood in the benchmark. But I do believe—this might have been one that had the most population or in the top two of loss population of districts—of the challenged districts.

Q. Did you have a goal of making—if you look just north of this district, you see an indication that there's a District 93. What was your political role with 93?

A. Well, the reality was we had a population issue. And so if you look at Deep Creek precinct—I don't know how to work this—I—there you can. Deep Creek precinct, then you have Glenn Oder, who was an incumbent. And you [509] had Robin Abbott over here, who was an incumbent in 93. And so over here, we had, of course, Mamye BaCote here. To her east, of course, was Hampton and that district, which I believe is probably one of the more compact districts that exist.

And so going north was really the only option unless I was going to combine and go over with Gordon Helsel, and Brenda Pogge, which is up here, and really have to combine republicans or dramatically change their configuration of their districts. So we moved 93 and made that a more competitive district, and the base of 93 was just pushed up north and then we used what was left over from House District 64.

Q. And is it now a competitive district?

A. It absolutely is. 2011 a republican won it. 2013 a democratic won it. 2015 democratic held the seat and it's a contested race. One of the targeted races for both the republicans and democrats for this year.

JUDGE PAYNE: You're talking about in 93—

THE WITNESS: Yes, sir.

JUDGE PAYNE:—or in 95?

THE WITNESS: Ninety-three.

Q. Would it have been possible to draw two majority minority 55 percent plus black voting age population and go no further north than here?

[510] A. I didn't do that exercise, but I believe you could.

You could come close to doing it. Yes, I believe so.

Q. And the placement of Reservoir, Epes, Denbigh into District 93, would that make it substantially more democratic?

A. It would, yes.

Q. And if you put those into 94, that would endanger the potential reelection of the incumbent republican member there?

A. In my opinion, it would, yes. It would have.

Q. So the inclusion of those VTDs in the Northern Neck of this district were predominately for political reasons?

A. Yes.

Q. Let me turn you to Plaintiffs' Exhibit 69, page 47. We're back to the northern end of that district, there are some split VTDs. Rosemont, Epes. Did you have any role in splitting those VTDs?

A. No.

Q. Do you have any reason to believe they were done on a racial basis?

MR. HAMILTON: Objection. Calls for speculation. If he wasn't involved, he wouldn't know.

MR. BRADEN: He might have a reason to believe, though.

JUDGE PAYNE: What difference does that make?

[511] MR. BRADEN: I think the Court already knows the answer. I will withdraw it.

JUDGE PAYNE: How much longer do you have with this witness, Mr. Braden?

MR. BRADEN: Not very long. In fact, we'll cut to move to the end. I don't need to go through every split—

JUDGE PAYNE: I'm not trying to cut you off. It's just about time to change court reporters, have the afternoon break, and I was just trying to see if we should wait a few minutes or we'll just go on and do it.

MR. BRADEN: I think, in all honesty, it would be another half hour.

JUDGE PAYNE: Well, then in all honesty, we'll take a 20-minute break.

(Recess taken.)

[512] JUDGE PAYNE: All right, Delegate Jones, I remind you you are under the same oath which you took earlier today.

THE WITNESS: Sure.

THE COURT: All right, Mr. Braden.

MR. BRADEN: Thank you, Your Honor.

Q. Delegate Jones, how did you come up with your black voting-age population goal?

A. I was informed by previous litigation.

Q. And you were involved in that litigation because you were the drafter of the 2001 plan?

A. Yes, I was a chief patron, and I was a named defendant.

JUDGE PAYNE: I'm sorry, Mr. Braden. How did he become informed as to what, though? The population, is it population—

MR. BRADEN: The black population goal because of that litigation that was the underlying—

JUDGE PAYNE: The black voting-age population goal.

MR. BRADEN: Yes.

JUDGE KEENAN: Mr. Braden, it would be great if you could keep your voice up.

MR. BRADEN: My apologies.

JUDGE KEENAN: Thank you.

JUDGE PAYNE: You were informed as to the BVAP goal by previous litigation, and I interrupted. What litigation are you talking about?

[513] THE WITNESS: It was *Wilkins v. West*.

Q. And you were originally a named defendant?

A. Correct.

Q. And what specifically from that litigation informed you?

A. It was a report, the Loewen report.

Q. And did that report support your position and your goal?

A. It did.

Q. Did you receive information from anywhere else as to what the goal for black voting-age population should be?

A. Delegate Spruill.

Q. I'd like to bring up now Plaintiffs' Exhibit 36. That's the—

JUDGE PAYNE: What? Oh.

MR. HAMILTON: Objection, Your Honor. Before the video is played—

JUDGE PAYNE: What?

MR. HAMILTON: I said objection, Your Honor. Before this video is played, this is Plaintiffs' Exhibit 36. It was played during the last trial. That appears as page 278 through page 279 of the 2015 trial. The transcript appears at Plaintiffs' Exhibit 35.

So this transcript is in the record for the Court. The video has already been played once. We have two or three of these that have been identified by the intervenors, and I would object on the grounds that it is cumulative and [514] repetitive. This is exactly—not only a little bit duplicative, it is exactly duplicative, plus we already have a written transcript in the record.

THE COURT: Would it have taken longer to hear it than the objection?

MR. HAMILTON: There's three of them. I thought in candor—

JUDGE PAYNE: We're all now informed by television, so let's see it quickly.

MR. BRADEN: Yes, Your Honor. Your Honor, there will make everyone happy. This is the only additional video we plan on playing.

JUDGE PAYNE: Good.

(Video played.)

Q. Delegate Jones, were you present for that speech?

A. I was.

Q. And did Delegate Spruill speak on other occasions in support of your plan?

A. He did.

Q. Was Delegate Spruill one of your sources of your goals for the black voting-age populations in the district?

A. He was one of two members of the Black Caucus that were dealing with the other ten members.

[515] JUDGE PAYNE: The question was, was he one of the sources of the 55 percent.

THE WITNESS: Yes, sir. I'm sorry. I misunderstood the question.

Q. Your use of a goal in drawing the plans, in your opinion, outside of District 75, did it require you to violate any of Virginia's traditional redistricting criteria?

A. It did not.

Q. You were involved, as we've discussed before, in the 2001 redistricting process as the drafter of the bill?

A. I was.

Q. At that time, did the state of the Virginia, prior to drafting the bill, have any—hire any type of political science expert to do any type of racial block voting analysis?

A. Not that I'm aware of.

Q. No homogeneous or regression analysis?

A. No.

Q. In 2011, are you aware of anybody doing a racial block voting analysis, homogeneous analysis, or any political scientist prior to you drafting the plan in 2011?

A. No.

Q. Did any black member come to you with any type of racial block voting analysis from political scientists?

A. No.

Q. NAACP?

[516] A. No.

Q. ACLU?

A. No.

Q. Any civil rights organization?

A. No.

Q. Any member of the legislature, period, tender any document like that?

A. Not that I recall.

Q. To the best of your knowledge, that's never been done; no types of racial block voting analysis has

ever been done in Virginia prior to the adoption of the plan.

A. Not that I'm aware of.

Q. You've heard some of the discussion and been present for some of the discussion, so is it fair to say you have some limited degree of understanding when we talk about how you develop a racial block voting analysis?

A. It would be limited. I cannot tell you that I could reproduce in my mind the charts that have been presented. It reminds me a lot of an obtuse class I took in college.

Q. So as we sit here right now, you don't know whether it could even be done?

A. The timeframe that we had from the time that we received the PO 94 data until we had to have a plan before DOJ, I do not think so.

Q. And in the plan, there was 12 majority-minority districts. [517] That was the goal?

A. Correct.

Q. How many went up in black voting population?

A. Six.

Q. How many went down?

A. Six.

Q. Was the principle primary goal of the plan the continuation of the status quo?

A. It was.

MR. BRADEN: No more questions, Your Honor.

JUDGE PAYNE: Cross-examination.

CROSS-EXAMINATION